

AMENDED AGENDA

**DES MOINES CITY COUNCIL
REGULAR MEETING
City Council Chambers
21630 11th Avenue S, Des Moines, Washington**

July 11, 2019 – 7:00 p.m.

CALL TO ORDER**PLEDGE OF ALLEGIANCE****ROLL CALL****CORRESPONDENCE****COMMENTS FROM THE PUBLIC – 20 minutes**

Please Note: Public comment will be limited to 20 minutes. If time allows, we will resume public comment at the end of our meeting after all official business has been conducted.

BOARD & COMMITTEE REPORTS/COUNCILMEMBER COMMENTS – 30 minutes**PRESIDING OFFICER'S REPORT**

Item 1: PORT OF SEATTLE SOUTH KING COUNTY FUND
PRESENTATION

ADMINISTRATION REPORT

Item 1: MARINA BULKHEAD UPDATE

~~Item 2: SENIOR SERVICES PRESENTATION~~

CONSENT CALENDAR

Item 1: APPROVAL OF VOUCHERS

Motion is to approve for payment vouchers and payroll transfers through July 3, 2019 included in the attached list and further described as follows:

Total A/P Checks/Vouchers	#157947-158089	\$1,352,548.49
Void Checks from Previous Check Runs		\$ (367.92)
Electronic Wire Transfers	# 1267-1273	\$ 220,978.69
Payroll Checks	# 19205-19222	\$ 6,704.05
Payroll Direct Deposit	#270001-270185	\$ 373,445.70
Total Checks and Wires for A/P and Payroll:		\$1,953,309.01

- Item 2: 24TH AVENUE SOUTH & SOUTH 208TH STREET
INTERSECTION IMPROVEMENTS: CONSULTANT ON-CALL
AGREEMENT TASK ASSIGNMENT FOR ENGINEERING
SERVICES
Motion is approve the 2018-2019 On-Call General Civil
Engineering Services Task Order #2018-10 with KPG Inc. to
provide engineering services for the 24th Avenue South & South
208th Street Intersection Improvements Project in the amount of
\$59,913.00, and further authorize the City Manager to sign said
Contract substantially in the form as submitted.
- Item 3: PACIFIC HEIGHTS PUD FINAL PLAT
Motion is to adopt Draft Resolution No. 19-077 approving the final
plat entitled "Pacific Heights," City File No. LUA2012-0001.
- Item 4: COMPENSATION FOR NON-REPRESENTED EMPLOYEES
Motion is to adopt Draft Resolution No. 19-072 regarding
compensation for non-represented employees from January 1,
2019, through December 31, 2019, providing wage increases
which are equitable in comparison to the Des Moines Police Guild
Collective Bargaining Agreement.

PUBLIC HEARING/CONTINUED PUBLIC HEARING

- Item 1: THIRD READING AND CONTINUED PUBLIC HEARING TO
CONSIDER DRAFT ORDINANCE NO. 19-048 RELATING TO
ZONING, AMENDING THE USE TABLE IN DMMC 18.52.010B,
ADDING AND REVISING DEFINITIONS IN DMMC 18.01.050
Staff Presentation: Chief Strategic Officer Susan Cezar

OLD BUSINESS

- Item 1: SECOND READING OF DRAFT ORDINANCE NO. 19-010
RELATED TO THE CITY OF DES MOINES SHORELINE
MASTER PROGRAM PERIODIC REVIEW AND AMENDMENT
Staff Presentation: Land Use Planner II Jason Woycke

NEW BUSINESS

- Item 1: EQUIPMENT PURCHASE
Staff Presentation: Public Works Director Brandon Carver
- Item 2: MARY GAY, SONJU AND VAN GASKEN PARK ENHANCEMENTS:
REMOVAL OF NON-PARK RELATED STRUCTURES
Staff Presentation: Public Works Director Brandon Carver
- Item 3: DRAFT ORDINANCE NO. 19-024: DES MOINES MEMORIAL
DRIVE SOUTH AND SOUTH 200TH INTERSECTION
IMPROVEMENT PROJECT AUTHORIZATION FOR
CONDEMNATION
Staff Presentation: City Attorney Tim George

Item 4: DRAFT ORDINANCE 18-107 SMALL CELL FACILITIES
FRANCHISE AGREEMENT WITH EXTENET SYSTEMS, INC.,
FIRST READING
Staff Presentation: City Attorney Tim George

EXECUTIVE SESSION

PROPERTY ACQUISITION UNDER RCW 42.30.110(1)(b) and
POTENTIAL LITIGATION RCW 42.30.110(1)(i) - 30 Minutes

NEXT MEETING DATE

August 8, 2019 City Council Budget Retreat

ADJOURNMENT

THIS PAGE LEFT INTENTIONALLY BLANK

CITY OF DES MOINES
Voucher Certification Approval

July 11, 2019

Auditing Officer Certification

Vouchers and Payroll transfers audited and certified by the auditing officer as required by RCW 42.24.080, and those expense reimbursement claims certified as required by RCW 42.24.090, have been recorded on a listing, which has been made available to the City Council.

As of **July 11, 2019** the Des Moines City Council, by unanimous vote, does approve for payment those vouchers through July 3, 2019 and payroll transfers through July 5, 2019 included in the attached list and further described as follows:

The vouchers below have been reviewed and certified by individual departments and the City of Des Moines Auditing Officer:


 Beth Anne Wroe, Finance Director
ACTING DIRECTOR

	# From	# To	Amounts
Claims Vouchers:			
Total A/P Checks/Vouchers	157947	- 158089	1,352,548.49
Void Checks from Previous Check Runs			(367.92)
Electronic Wire Transfers	1267	1273	220,978.69
Total claims paid			1,573,159.26
Payroll Vouchers			
Payroll Checks	19205	19222	6,704.05
Direct Deposit	270001	270185	373,445.70
Total Paychecks/Direct Deposits paid			380,149.75
Total checks and wires for A/P & Payroll			1,953,309.01

THIS PAGE LEFT INTENTIONALLY BLANK

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: 24th Ave South & South 208th Street
Intersection Improvements: Consultant On-Call
Agreement Task Assignment for Engineering
Services

ATTACHMENTS:

1. 2018-2019 On-Call General Civil
Engineering Services, KPG Inc., Task
Order #2018-10
2. Draft CIP Project Budget Worksheet

FOR AGENDA OF: July 11, 2019

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: July 2, 2019

CLEARANCES:

- ☐ Community Development N/A
- ☐ Marina N/A
- ☐ Parks, Recreation & Senior Services N/A
- ☒ Public Works PBC

CHIEF OPERATIONS OFFICER: DSB

- ☒ Legal JS
- ☒ Finance CR
- ☐ Courts N/A
- ☐ Police N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [Signature]

Purpose and Recommendation

The purpose of this agenda item is for City Council to approve a 2018-2019 On-Call General Civil Engineering Services Task Order (Attachment 1) with KPG Inc. to provide engineering services for the 24th Ave South & South 208th Street Intersection Improvements Project.

Suggested Motion

Motion 1: "I move to approve the 2018-2019 On-Call General Civil Engineering Services Task Order #2018-10 with KPG Inc. to provide engineering services for the 24th Ave South & South 208th Street Intersection Improvements Project in the amount of \$59,913.00, and further authorize the City Manager to sign said Contract substantially in the form as submitted."

Background

24th Ave South, between South 216th Street and S 208th Street has recently been improved as part of the Transportation Gateway Project to serve growing capacity and development as defined in the City's Comprehensive Transportation Plan. Additionally, the City of SeaTac has completed their Connecting 24th/28th Avenue S Project, extending 24th Ave South to South 188th Street adjacent to SeaTac Airport. This new roadway corridor delivers a five-lane arterial roadway which includes sidewalks and bike lanes, ultimately connecting the Des Moines Creek Business Park, Federal Aviation Administration regional headquarters, Prologis, SeaTac commercial aviation support, Angle Lake Sound Transit Light Rail Station, and SeaTac International Airport.

Previously a dead end two-lane roadway, the significant changes to 24th Ave South roadway geometry, traffic volume & speeds, and expected area growth have necessitated the need to pursue a traffic signal at the intersection of 24th Ave South & South 208th Street.

Discussion

In coordination with the City of SeaTac thru a pending Interlocal Agreement (ILA), both Des Moines and SeaTac have identified a traffic signal need at the intersection of 24th Ave South & S 208th Street. Non-motorized operations will see significant improvements with dedicated crosswalks while vehicular traffic will be managed appropriately in agreement with long-range traffic forecasts.

As part of this project, the City of SeaTac will be partnering with Des Moines to further ensure completion of the intersection improvements. Des Moines maintains intersection control and will manage the project from design thru construction. The ILA is anticipated to be fully executed well before solicitation for construction bids.

The City will also work with the Washington State Department of Transportation for pole procurement to reduce future construction costs and schedule delay.

Alternatives

The City Council could elect not to approve the 2018-2019 On-call General Civil Engineering Services Task Order #2018-10 with KPG Inc. for engineering services. The City does not have adequate resources to complete this design and the project would be placed on hold.

Financial Impact

The City's Draft 2020-2025 CIP Budget Worksheet include secured revenues to achieve full funding for this Consultant Services Contract (Attachment 2).

Recommendation

Staff recommends adoption of the motion.

Formal Task Assignment Document

Task Number

Task Order # KPG 2018-10

The general provisions and clauses of Agreement 2018-2019 On-Call General Civil Engineering Services shall be in full force and effect for this Task Assignment

Location of Project: Intersection of 24th Ave S & S 208th

Project Title: 24th Ave S & S 208th Intersection Improvements Project

Maximum Amount Payable Per Task Assignment: \$59,913

Completion Date: March 31, 2020

Description of Work: Bid Document preparation in accordance with Exhibit A.

Agency Project Manager Signature: _____ Date: _____

Oral Authorization Date: _____ Date: _____

Consultant Signature: Tony Wright Date: 6/20/2019

Agency Approving Authority: _____ Date: _____

Exhibit A

City of Des Moines
24th Ave S & S 208th Intersection Improvements Project
T.O. 2018-10
Scope of Work

KPG P.S.
 June 2019

Purpose

The City of Des Moines plans to install a new signal at the intersection of S 208th Street and 24th Ave S. This Scope of Work includes the effort required to prepare a complete set of bid documents ready for advertisement by November 2019.

Proposed Improvements

Specific improvements to be completed under this scope of work include:

1. New signal at 24th Ave S and S 208th Street
2. Modify existing channelization on East leg of 208th to create left turn pocket
3. Provide fiber interconnection to signal at 216th using existing conduits

Assumptions

- No environmental documentation will be needed.
- Existing geotechnical reports will be used.
- Existing service cabinet on the NE corner will be used as the power source for the new signal, and a new cabinet will be installed on the SW corner.
- Existing curb lines will not require re-alignment, curb ramps may require minor regrading to accommodate new pedestrian push buttons.
- Warrant Analysis will be determined by the City.
- Traffic counts will be provided by the City.
- Pot holing will be provided by the City.
- Existing conduits under roadway will be utilized.
- No property rights-will be required.
- City will coordinate with WSDOT to verify existing underground conduits.
- Fiber connections to City of Seatac will not be required.

Scope of Work

TASK 1 – PROJECT MANAGEMENT/COORDINATION/ADMINISTRATION

1.1 Provide project management administrative services including:

- Project set-up and execute agreement
- Preparation of monthly progress reports and invoices
- Record keeping and project closeout

Exhibit A

- 1.2 Provide overall Task management including:
 - Project staff management and coordination
 - Schedule and budget monitoring
- 1.3 Coordinate with City staff, including preparation and attendance at 2 coordination meetings
- 1.4 Provide QA / QC reviews by senior staff of all major deliverables prior to submittal to the City

TASK 2 – SURVEY AND BASE MAPPING

This task describes the effort anticipated to complete a base map of the project area. A private utility location company will be utilized to locate private franchised utilities.

TASK 3 – DESIGN

This Task requires effort to complete the design. Effort included under this task is as follows:

- 3.1 Project Kick-off meeting: Upon complete of the basemap, KPG will arrange and attend a Project Kick-off meeting with City.
- 3.2 Prepare and submit for review and approval a channelization plan with Autoturn movements.
- 3.3 Curb ramp layout and approval.
- 3.4 Provide preliminary layout of pole/foundation locations, and coordinate pot holes to determine if utility conflicts exist.
- 3.5 Courtesy WSDOT Review: KPG will coordinate with WSDOT's maintenance division for a courtesy review of plans and specification for material review.
- 3.6 Traffic Analysis – KPG will complete a traffic analysis as required to determine phasing and timing plans, and the City will provide traffic volumes.
- 3.7 Pot Holes: Pot holes will be completed at each signal pole foundation location by the City at KPG marked locations as shown in the 30% signal design.
- 3.8 Ordering Poles: KPG will provide a pole specification sheet to the City. City will submit to WSDOT and order poles. KPG will assist the City in review of WSDOT signal order documentation.
- 3.9 Special Foundations: Due to anticipated utility conflicts, a structural engineer will be required for special pole foundation design. \$1,500 has been included in the budget.
- 3.10 Construction Cost Estimates: Prepare a 30%, 90% & final Construction Cost Estimate.
- 3.11 Specifications: Prepare contract specifications: Included with 90% and Final review submittals.
- 3.12 30% design: Prepare 30% design plans that show plan view of all signal pole foundation locations and identify extent of curb ramp reconstruction. Upon approval of signal pole locations, pot hole services will be arranged to confirm there are no utility conflicts. After confirmation of pole locations a specification sheet will be prepared and submitted to City. City will coordinate pole purchase with WSDOT.

Exhibit A

3.13 Final design (90% and Final Bid Documents) – The plan sheets required are anticipated to be:

- 1 Cover Sheet
- 1 Legend Abbreviation sheets.
- 1 demolition/site preparation sheet
- 2 Signal Plan & Signal Notes
- 1 Wiring diagram
- 1 Pole Specification Sheet (for WSDOT only)
- 1 Signal Detail Sheet
- 1 Restoration sheet
- 1 Channelization Plan
- 1 Intersection/curb ramp grading sheet
- 1 Restoration detail sheet

Additional services such as bidding assistance, right-of-way services, and construction services may be added at the request of the City.

HOOR AND FEE ESTIMATE

EXHIBIT A-1

KPG

Project: City of Des Moines
S 208h Street/24th Ave S Signal
KPG#: 17148W10
City # 2018-10

Task	Description	Labor Hour Estimate							Total Fee
		*Project Principal	Senior Engineer	*Resident/ Project Engineer	Design Engineer	Survey Manage	*Survey Crew	Survey Technician	*KPG Corp Admin
		\$ 198.33	\$ 161.37	\$ 128.86	\$ 105.55	\$ 193.75	\$ 165.98	\$ 96.89	\$ 83.52
									Fee
Task									
1	Project Management (6 months)								\$ -
1.1	PM administrative Services	12						8	\$ 3,048
1.2	Task management	4							\$ 793
1.3	Coordination Meetings (assume 2)	2	4						\$ 1,042
1.4	QA/QC		8						\$ 1,291
									\$ -
2	Survey and Base Mapping								\$ -
	Project start up					2			\$ 388
	Survey Control						2	2	\$ 526
	Field Work						10		\$ 1,660
	Office Base map							8	\$ 775
	Right-of-way determination					6		4	\$ 1,550
									\$ -
3	Design								\$ -
3.1	Design Kick-off	2	4						\$ 1,042
3.2	Channelization Autoturn movements		2	4					\$ 838
3.3	Curb ramp layout and approval	4	4		12				\$ 2,705
3.4	Preliminary signal layout		8	16	6				\$ 3,986
3.5	WSDOT coordination and Courtesy review		5	5					\$ 1,451
3.6	Traffic Analysis		4		16				\$ 2,334
3.7	Pot Hole Coordination		2		4				\$ 745
3.8	Ordering Poles		4	4	8				\$ 2,005
3.9	Special Foundation Design								\$ -
3.10	Construction Cost Est	1	4	11	6				\$ 2,895
3.11	Specifications (90% and Final)	2	24	16					\$ 6,331
3.12	30% Design		6	12	16				\$ 4,203
3.13	Final Design	8	32	60	40				\$ 18,704
									\$ -
	Reimbursable expenses - (Structural Design \$1,500 + Mileage \$100)								\$ 1,600
	Task Totals	35	111	128	108	8	12	14	8
									\$ 59,913

CITY OF DES MOINES
2020-2025 CAPITAL IMPROVEMENT PLAN
(Amount in Thousands)

24th Ave/S. 208th St Intersection Improvements

Project # 319.302

Summary Project Description:

Install traffic signal and crosswalk at the intersection of 24th Avenue South & South 208th Street.

CIP Category:

Managing Department:

Justification/Benefits:

Signal improvements at the intersection of 24th Avenue South & South 208th Street will change traffic orientations for vehicles and pedestrians. Given the level of the 24th/208th crossing, Des Moines Creek Business Park, and Seatac's Business Park. This project will be in partnership with Seatac.

PROJECT SCOPE			
Expenditures	Current Budget	Requested Change	Total Budget
Design	60	-	60
Land & Right of Way	-	-	-
Construction	450	170	620
Contingency	30	-	30
Total Expenditures	540	170	710

ANNUAL ALLOCATION							
Project to Date 12/31/18	Scheduled Year 2019	Plan Year 2020	Plan Year 2021	Plan Year 2022	Plan Year 2023	Plan Year 2024	Plan Year 2025
-	60	-	-	-	-	-	-
-	-	-	-	-	-	-	-
-	-	620	-	-	-	-	-
-	-	30	-	-	-	-	-
-	60	650	-	-	-	-	-

Funding Sources	Current Budget	Requested Change	Total Budget
Traffic in-Lieu	200	-	200
Traffic Impact Fees - City Wide	210	-	210
Private Contributions-Seatacs	130	170	300
Total Funding	540	170	710

Project to Date 12/31/18	Scheduled Year 2019	Plan Year 2020	Plan Year 2021	Plan Year 2022	Plan Year 2023	Plan Year 2024	Plan Year 2025
-	50	150	-	-	-	-	-
-	10	200	-	-	-	-	-
200	-	100	-	-	-	-	-
200	60	450	-	-	-	-	-

OPERATING IMPACT			
Operating Impact	6 Year Total		
Revenue	-	-	-
Expenses	-	-	-
Net Impact	-	-	-

ANNUAL OPERATING IMPACT							
12/31/18	2019	2020	2021	2022	2023	2024	2025
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Pacific Heights PUD Final Plat

FOR AGENDA OF: July 11, 2019

ATTACHMENTS:

1. Draft Resolution 19-077
2. Settlement Agreement
3. Resolution 1069 (Preliminary Approval)
4. 8/26/15 Minor Deviation
5. 3/6/18 Minor Deviation
6. Final Plat Document

DEPT. OF ORIGIN: Community Development

DATE SUBMITTED: July 3, 2019

CLEARANCES:

- ☒ Community Development *SMC*
☐ Marina _____
☐ Parks, Recreation & Senior Services _____
☒ Public Works *PBC*

CHIEF OPERATIONS OFFICER: *DSB*

- ☒ Legal *MH*
☐ Finance _____
☐ Courts _____
☐ Police _____

APPROVED BY CITY MANAGER
 FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation

The purpose of this agenda item is to facilitate the City Council consideration of Draft Resolution 19-077 (Attachment 1) approving the final subdivision for the planned unit development (PUD) entitled "Pacific Heights." Staff recommends that the Council approve the proposed final plat by passing the following motions which will appear on the consent calendar:

Suggested Motion:

Motion 1: "I move to adopt Draft Resolution No. 19-077 approving the final plat entitled "Pacific Heights", City File No. LUA2012-0001."

Background

On August 13, 1998, the Boundary Review Board (BRB) issued a decision approving the annexation of property known as the Redondo Riviera Annexation Area in to the City of Des Moines. This included property owned by Granville Southern and Donald and Marie Tavis. At the time of the BRB decision, Granville Southern had a vested application for a project known as Pacific Place (King County Permit Application 807C0270) filed and under review with the King County Department of Development and Environmental Services. Pacific Place would be transferred to the City of Des Moines since the proposed project would be mainly located in Des Moines and only partially in the Federal Way annexation area.

Soon after the annexation was approved, Granville Southern filed an appeal of the BRB's annexation decision with the King County Superior Court. In order to settle the litigation, the Cities of Des Moines and Federal Way, along with Granville Southern and Donald and Marie Tavis entered into a Settlement Agreement (Attachment 2) in 2000 which established guidelines for future review of the proposed Pacific Place development. No expiration date was included in this agreement.

The property changed ownership several times between 2000 and the present and the project was renamed Pacific Heights. Preliminary plat approval was granted on March 27, 2008 (Attachment 3). Two minor deviation requests were issued, one on August 26, 2015 (Attachment 4) and one on March 6, 2018 (Attachment 5).

Construction of the required infrastructure is now substantially complete, and the site is served by roads, drainage, utility systems and other improvements required for the future residential use of the site.

Discussion

City Council review of applications for final plat approval is required pursuant to DMMC 17.10.240. Should Council approve the proposed final plat, it will allow the final plat entitled 'Pacific Heights' to be recorded with the King County Recorder's Office and will enable the applicant to file for building permits on the lots within the subdivision.

DR Horton filed a Final Plat application on June 26, 2018. An extension of the 30 day review timeline for final plats in order to complete the construction of improvements was requested. Des Moines and Federal Way staff concluded that the final plat (Attachment 6) sufficiently demonstrated that the subdivision meets the approval criteria established by DMMC 17.10.240 and the settlement agreement. An evaluation of the final plat's compliance with the criteria is provided below:

(1) PRELIMINARY PLAT CONSISTENCY

DMMC 17.10.240 (1)(a) requires that the final plat be consistent with the approved preliminary subdivision. Based on a review of the preliminary plat design and multiple site visits, staff has concluded that the final plat is consistent with the preliminary plat design approved by the City Council and the settlement agreement, except for the following item:

- a. Applicant has submitted a Declaration of Covenants, Conditions and Restrictions. The document will be recorded concurrently with final plat.

(2) SUBDIVISION DESIGN AND LAYOUT

DMMC 17.10.240(1)(b) requires the final plat to be consistent with the design and layout requirements of chapter 17.35 DMMC and the provisions established by chapter 58.17 RCW. The Findings of Fact in Resolution 1069 found that the proposed preliminary PUD subdivision was consistent with chapter 17.35 DMMC and chapter 58.17 RCW. Therefore, the final plat is consistent with this requirement since it is consistent with the approved preliminary plat.

(3) PUBLIC INFRASTRUCTURE

DMMC 17.10.240(1)(c) requires that all infrastructure improvements be installed or the posting of financial securities to cover the cost of installation of the outstanding improvements. All required infrastructure improvements have either been installed by the applicant or will be bonded prior to recording final plat. The new roadways have been constructed along with related curb, gutter, sidewalk and street light improvements.

(4) PERFORMANCE AND MAINTENANCE BONDING

RCW 58.17.130 requires that local regulations provide that in lieu of the completion of the actual construction of any required improvements prior to the approval of a final plat the applicant can post securities for the outstanding improvements ensuring completion after recordation of the final plat. The City provides for this in DMMC 17.40.140, but requires that the work be completed within one year of a recordation of the final plat documents. The City Manager can grant a one year extension if the work is not completed within a year of recordation of the final plat.

The applicant currently has a performance bond for civil improvements pertaining to the approved road and drainage plans. A plat maintenance bond will be retained for a one year maintenance period beginning at the acceptance of the improvements. A wetland mitigation bond will be held for five years to cover work associated with the monitoring plan.

Alternatives

The City Council has two other alternatives in addition to the recommended action:

1. The City Council may approve the final plat with additional conditions; however, any changes must be supported by additions to the findings of fact. The changes, if any must be supported by the public record.
2. The City Council may deny the final plat; however, new findings of fact would have to be prepared to support this decision. The reason for denying the final plat approval would have to be supported by the public record.

Financial Impact

No immediate and direct financial impacts are anticipated. Approval of the subdivision and subsequent development has a long term positive impact on overall assessed valuation of property and corresponding taxes collected as well as collection of traffic impact fees, but these revenues are largely offset by mitigation of project impacts or expenditures for future City services related to residential use of the property.

Recommendation/Conclusion

Des Moines and Federal Way staff have reviewed the proposed final plat (Attachment 6) and determined that the subdivision is consistent with the cited local and state statutes. Therefore, staff recommends approval of the Final Plat entitled "Pacific Heights."

Concurrence

The Planning, Building and Public Works and Legal Departments concur. The City of Federal Way, South King Fire and Rescue, and Lakehaven Water and Sewer District have also reviewed the materials and recommend approval of the final plat entitled "Pacific Heights."

CITY ATTORNEY FIRST DRAFT, 07/11/2019**DRAFT RESOLUTION NO. 19-077**

A RESOLUTION OF THE CITY OF DES MOINES, WASHINGTON approving the Final Plat entitled "Pacific Heights" as shown and described in City Administration file number LUA2012-0001.

WHEREAS, the City has received an application for the Final Plat entitled "Pacific Heights," from DR Horton/SSHI, LLC, the owner of the real property described in said application, and

WHEREAS, pursuant to the State Environmental Policy Act, Chapter 43.21C RCW, the Administrative Guideline and local ordinance adopted to implement it, the SEPA Official reviewed all relevant environmental documents and determined that the proposed subdivision would not result in probable significant adverse environmental impacts, and based on information within those environmental documents, a Mitigated Determination of Non-significance was issued on December 4, 2007, and

WHEREAS, said environmental documents have been available and accompanied the application throughout the entire review process, and

WHEREAS, the *Settlement Agreement, Waiver and Release By and Between Granville Southern Corporation, Donald & Marie Tavis, and the Cities of Des Moines and Federal Way* governs the review and approval of the subdivision, and

WHEREAS, the City Council, in regular meeting on March 27, 2008, reviewed the preliminary plat entitled "Pacific Heights," and

WHEREAS, the City Council passed Resolution Number 1069 at its regular meeting on March 27, 2008 approving the preliminary plat entitled "Pacific Heights," and

WHEREAS, the Community Development and Public Works Directors approved two minor deviations to the preliminary plat entitled "Pacific Heights" dated August 26, 2015 and March 6, 2018, and

WHEREAS, the City Council, in regular meeting on July 11, 2019, reviewed the proposed Final Plat entitled "Pacific Heights," now, therefore

Resolution No. 19-077
Page 2 of 3

THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:

Sec. 1. The following findings of fact are adopted by the Des Moines City Council:

(1) The Final Plat is consistent with the preliminary subdivision approved by the City Council on March 27, 2008, under Resolution No. 1069 and the Minor Deviations dated August 26, 2015 and March 6, 2018, and

(2) All required improvements are installed or securities to cover the cost of installation are submitted in accordance with DMMC 17.40.090, and

(3) The Final Plat is consistent with the provisions of Title 17 DMMC, and Chapter 58.17 RCW.

Sec. 2. Decision criteria. The criteria used in making the decision are those required by chapter 17.10 DMMC and chapter 18.230 DMMC.

Sec. 3. Approval subject to conditions. The PUD subdivision and the Final Plat entitled "Pacific Heights" is hereby approved by the Des Moines City Council subject to the following conditions:

(1) The applicant has submitted a Declaration of Covenants, Conditions and Restrictions. The document will be recorded concurrently with the final plat, and

(2) The park in lieu fee shall be paid upon final approval of the Planned Unit Development pursuant to the settlement agreement, and

(4) Ownership of the surface water tract and environmentally sensitive area tract shall be deeded to the city after recording of the final plat and upon acceptance, and

(5) The 15 foot storm drainage easement between Pacific Highway South and South 292nd Street for the City of Federal Way shall be recorded upon approval.

Sec. 4. Compliance with other law. Nothing in this Resolution shall be construed as excusing the applicant from compliance with all federal, state, or local statutes,

Resolution No. 19-077
Page 3 of 3

ordinances, or regulations applicable to this subdivision other than as expressly set forth herein.

Sec. 5. Resolution attached to approval documents. A certified copy of this Resolution shall be attached to and become a part of the evidence of said subdivision and Final Plat and shall be delivered to the applicant.

Sec. 6. Distribution of resolution following City Council action. Certified or conformed copies of this Resolution shall be delivered to the following:

(1) City of Des Moines Community Development and Public Works Departments;

(2) South King Fire and Rescue;

(3) City Clerk of the City of Des Moines; and

(4) City of Federal Way.

ADOPTED BY the City Council of the City of Des Moines, Washington this _____ day of _____, 2019 and signed in authentication thereof this _____ day of _____, 2019.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

THIS PAGE LEFT INTENTIONALLY BLANK

DEC 7 0 00

SETTLEMENT AGREEMENT, WAIVER AND RELEASE

By And Between Granville Southern Corporation, Donald & Marie Tavis, And The Cities Of
Des Moines And Federal Way

WHEREAS, the City of Des Moines ("Des Moines") is a municipal corporation organized under the laws of the State of Washington and has authority to enact laws and enter into agreements to promote the health, safety, and welfare of its citizens, and thereby control the use and development of property within its jurisdiction;

WHEREAS, the City of Federal Way ("Federal Way") is a municipal corporation organized under the laws of the State of Washington and has authority to enact laws and enter into agreements to promote the health, safety, and welfare of its citizens, and thereby control the use and development of property within its jurisdiction;

WHEREAS, Granville Southern Corporation ("Granville Southern") and the marital Community of Donald and Marie Tavis ("Tavis") (Granville Southern and Tavis shall hereafter collectively be referred to as "Granville") (Note: The term "Granville" expressly includes "Coastal Pacific Development, Inc.," the name of the applicant reflected in some King County files associated with the above-referenced application) have filed an application with King County under King County Permit Application 807C0270 for approval of a development project on real property ("Granville Property") known as Pacific Place. King County's code, regulations, and land use controls, therefore, apply to said project. Tavis owns the Granville Property which is legally described in Exhibit A attached hereto. Granville Southern is under contract to purchase the Granville Property from Donald and Marie Tavis;

WHEREAS, King County's code, regulations, and land use controls applicable to the Granville Property development project known as Pacific Place filed with King County under King County Permit Application 807C0270 would allow for more lots/units, less open space, and other development than would be currently allowed under Des Moines' code, regulations, and land use controls;

WHEREAS, on or August 13, 1998, the BRB issued a decision approving the annexation of property known as the Redondo Riviera Annexation Area, File No. 2016, which included a portion of the subject real property into the City of Des Moines;

WHEREAS, Granville filed an appeal of the BRB's annexation decision with the King County Superior Court under Cause No. 98-2-19694-7KNT. Subsequently, the court conducted a hearing and rendered a written decision and judgment;

WHEREAS, an appeal and cross-appeal were filed from said King County Superior Court's decision in the Washington State Court of Appeals, Division I, under Cause No. 44528-6-1;

WHEREAS, the parties wish to settle the litigation, development issues, and the underlying dispute, including, but not limited to, compromise of the applicable code, regulations, and land use

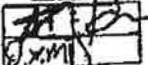
Initials
[Signature Box]

controls applicable to the Granville Property development project known as Pacific Place filed with King County under King County Permit Application 807C0270, in a mutually satisfactory manner;

WHEREAS, this Settlement Agreement, Waiver and Release (hereafter "Agreement") is entered into by and between Granville, Des Moines and Federal Way (collectively referenced as "Parties") to resolve legal matters arising out of lawsuits known as Granville Southern Corporation, et al. v. The Washington Boundary Review Board for King County, et al. King County Superior Court Cause No. 98-2-19694-7 KNT, and Granville Southern Corp. et al. v. The City of Federal Way, et al. Court of Appeals Case No. 44528-6-1, and to foreclose further claims, damages, requests for injunctive relief or disputes among the parties related to said matters.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

1. Granville, on its own behalf, its heirs, agents, business partners, investors, optionees/options, executors, administrators and assigns, does hereby release: each and every one of the Parties, their successors and assigns, officers, officials, employees, agents and attorneys, both individually and in their representative capacities, from any and all claims, appeals or disputes between Granville and the Parties, either jointly or severally, that have been or could have been raised in Granville Southern Corporation, et al. v. The Washington Boundary Review Board for King County, et al. King County Superior Court Cause No. 98-2-19694-7 KNT, or any appeals related thereto, from any claims for damages arising out of or related to the City of Des Moines' Redondo Riviera annexation, and from the actions of any party in litigating the above-referenced cases or in entering into this Agreement. Provided, however, it is expressly understood and agreed that this paragraph shall in no way bar any party from filing a claim, demand, or lawsuit for specific performance of the terms and conditions of this Agreement or for damages arising out of breach of the terms and conditions of this Agreement.
2. Granville warrants and affirms that it has not sold, transferred, or otherwise assigned all or any of its interests in any of its appeals, claims, requests for relief or causes of action released herein and that it is solely empowered to waive and release said matters. In support of this representation and in support of this Agreement, Granville agrees to indemnify and hold harmless any and all of the Parties and any persons or entities covered by this Agreement and any affiliated person, company or entity for any damages, costs, attorneys' fees or other expenses in defending any action brought by Granville, or anyone claiming to hold an interest from Granville based on the appeals, claims or causes of action encompassed by this Agreement.
3. As consideration for this Agreement, and upon the approval and execution of this Agreement by the Parties, Granville agrees to dismiss with prejudice its cross-appeal now pending before the Washington Court of Appeals entitled Granville Southern Corp. et al. v. The City of Federal Way, et al. Court of Appeals for the State of Washington, No. 44528-6-1, execute a stipulation providing for vacation of the Final Judgment previously entered by the Honorable Dean Lux in Granville Southern Corporation, et al. v. The Washington Boundary Review Board for King County, et al. King County Superior Court Cause No. 98-2-19694-7 KNT, and dismiss with

Initials


prejudice its appeal in Cause No. 98-2-19694-7 KNT. Granville, however, shall not be required to withdraw any applications for land use development on the Granville Property that are now pending and vested with King County, including, but, not limited to, the application filed under King County Permit Application 807C0270. Granville, however, agrees that upon annexation of a portion of the Granville Property to Des Moines, as set forth herein, that King County Permit Application 807C0270 shall be transferred to Des Moines for processing subject to the terms and conditions of this Agreement. It is expressly understood that subsequent building and other permits sought for units to be constructed on the subject property following annexation of a portion of the Granville Property into the City of Des Moines shall be processed under the land use and building codes of the City of Des Moines, subject to the terms and conditions of this Agreement

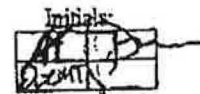
4. As consideration for the mutual promises set forth herein, the Parties collectively agree as follows:

- A. The Parties shall jointly seek relief, modification, satisfaction, or vacation of that judgment filed in King County Superior Court under Cause No. 98-2-19694-7KNT, on the basis that all issues, claims, and defenses relative to said Judgment have been compromised as reflected in this Agreement. Des Moines shall further proceed to modify, finalize, and obtain all appropriate approvals for the Redondo Riviera Annexation Area, File No. 2016 so that the portion of the Granville Property lying westerly of the eastern boundary of 15th Ave. South as depicted in the "Illustrative Site Plan" attached hereto as Exhibit B shall be annexed into Des Moines. The Parties shall fully support the annexation of the said portion of the Granville Property into Des Moines.
- B. Within 15 days of the date of this Agreement, Des Moines and Federal Way will commence the public process for amending their Interlocal Agreement, dated December 16, 1996, relating to their respective Potential Annexation Area Designation. Following completion of the public process, the Des Moines and Federal Way City Councils will consider a proposed amended PAA Interlocal Agreement which sets the PAA boundary between Des Moines and Federal Way at the eastern edge of the right-of-way of 15th Avenue South, as depicted on the Illustrative Site Plan attached hereto as Exhibit B.
- C. Prior to the annexation of any portion of the Granville Property to Des Moines or Federal Way, Des Moines and Federal Way shall adopt pre-annexation zoning and other land use controls and regulations in conformance with the "Illustrative Site Plan" attached hereto as Exhibit B, and the Zoning and Building Development Agreement attached hereto as Exhibit C. In case of conflicts between the Illustrative Site Plan and Building Development Agreement and Des Moines', King County's, or Federal Way's zoning, codes, regulations, and land use controls, the

Initials:
[Handwritten initials in a box]
5

"Illustrative Site Plan" attached hereto as Exhibit B, and the Zoning and Building Development Agreement attached hereto as Exhibit C shall control.

- D. Upon annexation of said portion of the Granville Property to Des Moines, King County shall transfer to Des Moines the processing of Granville's application for the multi-family development project on the entire Granville Property known as Pacific Place Condominiums, King County Permit Application 807C0270. Said King County Permit Application 807C0270 shall be deemed modified at the request of King County, Des Moines, and Federal Way to conform with the "Illustrative Site Plan" attached hereto as Exhibit B, and the Zoning and Building Development Agreement attached hereto as Exhibit C. Provided, that said King County Permit Application 807C0270 shall not be withdrawn from King County, shall not be deemed to have been modified at the request of the applicant, and said transfer shall have no impact on the vested status of said King County Permit Application 807C0270.
- E. Upon said transfer, said King County Permit Application 807C0270 shall be processed by Des Moines in conformance with the terms and conditions of this Agreement. It is expressly understood that subsequent building and other permits sought for units to be constructed on the subject property following annexation of a portion of the Granville Property into the City of Des Moines shall be processed under the land use and building codes of the City of Des Moines, subject to the terms and condition herein. By this Agreement, Federal Way consents to the transfer of said application to the City of Des Moines, and the processing of said application and/or subsequent permit applications on the Granville Property by Des Moines, subject to the terms and conditions herein.
- F. Upon annexation of said portion of the Granville Property to Des Moines, Des Moines shall process Granville's application for the development project on the entire Granville Property known as Pacific Place Condominiums, King County Permit Application 807C0270. Granville shall not be required to submit, file, or produce any additional documentation, reports, or information other than previously provided to the Parties as part of said King County Permit Application 807C0270. It is expressly understood that this limit on additional documentation shall not be construed to apply to any permit application filed after annexation of any portion of the Granville Property into the City of Des Moines, except for any such permit application that is required for approval as a Planned Unit Development or Subdivision of the development project on the entire Granville Property known as Pacific Place Condominiums, King County Permit Application 807C0270. The Parties agree that the documentation provided to the Parties as part of said King County Permit Application 807C0270 is as follows:

Initials:


- Environmental Site Assessment by Earth Consultants, Inc. dated September 23, 1997
- Road Variance by DBM Consulting Engineers dated February 19, 1998
- Subdivision Guarantees by First American Title Insurance Company Order No. 345322-5
- Wildlife Study by Wetland Rescues, Inc. dated March 25, 1998
- Level One Drainage Report by Eastside Consultants, Inc. dated August 25, 1997
- Geotechnical Report by J. Keith Cross, P.E., dated May 31, 1997
- Traffic Report by David Hamlin & Associates and subsequent addendums
- Level Two Downstream Analysis by DBM Consulting Engineers dated June 8, 1998
- Technical Information Report By DBM Consulting Engineers dated October 24, 1997
- Wetland Report by Wetland Resources, Inc. dated July 29, 1997.

Des Moines' review, processing, and approval of said application shall be limited to a determination that said project complies with the "Illustrative Site Plan" attached hereto as Exhibit B, the Zoning and Building Development Agreement attached hereto as Exhibit C, and other conditions stated herein. Moreover, Des Moines shall not review, rescind, or otherwise modify approvals previously granted by King County under said King County Permit Application 807C0270. Except as otherwise stated herein, Des Moines shall further approve said project subject only and exclusively, without modification, amendment, or addition, to the terms and conditions of the "Illustrative Site Plan" attached hereto as Exhibit B, the Zoning and Building Development Agreement attached hereto as Exhibit C, and other conditions stated herein. Des Moines and Federal Way shall not object to, challenge, or otherwise oppose development of the Granville Property in accordance with the "Illustrative Site Plan" attached hereto as Exhibit B, the Zoning and Building Development Agreement attached hereto as Exhibit C, and other conditions stated herein. Provided, that Des Moines shall provide Federal Way a minimum of fourteen (14) days within which to review and comment on Des Moines' approval of Granville's Pacific Place project.

- G. The terms and conditions of the "Illustrative Site Plan" attached hereto as Exhibit B, the Zoning and Building Development Agreement attached hereto as Exhibit C, and other conditions stated herein can be amended, modified, or changed upon the express written approval of Granville (its successors or assigns), Des Moines, and Federal Way.

Initials:


- H. All process, review, and approval of subsequent applications filed relative to the entire Granville Property, including but not limited to, grading, drainage, construction related, and building permits, shall be by Des Moines and subject to the code, regulations, and requirements of Des Moines, except as otherwise set forth in the terms and conditions of the "Illustrative Site Plan" attached hereto as Exhibit B, the Zoning and Building Development Agreement attached hereto as Exhibit C, and other conditions stated herein. Provided, however, that Federal Way shall be given a two week period following submittal to review and comment on said applications.
- I. The City of Federal Way will dismiss its appeal now pending before the Washington Court of Appeals entitled Granville Southern Corp, et. al. v. The City of Federal Way, et. al. Court of Appeals for the State of Washington, No. 44528-6-1
- J. Each and every of the named Parties agree to prepare, revise, support and/or execute pleadings, notices, and contemporaneous agreements, as well as conduct and/or participate in any public hearings, deemed necessary to effectuate the intent and purposes of this Agreement.
- K. Each and every one of the named Parties agree to support, uphold and defend this Agreement in the event of an appeal, challenge, or lawsuit seeking to set aside, modify, or render void or invalid this Agreement. In the event, that this Agreement is set aside, modified, voided, or invalidated by a court of law, Granville shall be free, in its discretion, to proceed with its application for approval under King County Permit Application 807C0270, as initially filed.

5. Although King County is not a signing party to this Agreement, the County is encouraged to support and take actions consistent herewith.

6. The Parties understand and agree that the consideration the Parties herein agree to undertake, in the form of compliance with the above-referenced conditions, constitutes the Parties' total offer to resolve and settle any and all appeals, claims, damages or disputes among the parties hereto and that it is full, complete and adequate consideration and compensation for each other's acceptance of the terms stated herein and that no Party will receive any other or further consideration under the terms of this Agreement other than that expressly set forth herein.

7. In the event of that failure or inability of the Parties to comply with the terms and conditions of this Agreement, Granville shall be free, in its discretion, to proceed with its application for approval under King County Permit Application 807C0270, as initially filed. In such an event, the City of Federal Way and the City of Des Moines are likewise free to comment upon, object to, oppose, challenge and/or appeal development of the Granville Property under King County Permit Application 807C0270, as initially filed or as subsequently modified.

Initials:


8. This Agreement may be executed in identical counterparts. For purposes of recording, filing, or providing copies of this Agreement, the counterpart signature pages (and any other pages that are specially marked by the signatories) may be inserted into one of the counterparts to create a single original or copy of the entire agreement.

10. This Agreement shall be interpreted under the laws of the State of Washington.

11. The Parties hereby authorize their attorneys to (1) execute the appropriate notices to effect dismissal(s) with prejudice of any and all appeals or claims the Parties have initiated against any other Party(ies) or any persons covered by this Agreement; and (2) take all necessary and proper steps to ensure that such notices are filed on execution of this Agreement.

12. This Agreement shall be binding upon the heirs, successors and assigns of the parties. Each of the signatories represents and warrants that he or she has the authority to sign for his or her represented entity.

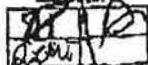
13. **Attorneys' Fees.** Should it be necessary for any party to this Agreement to initiate legal proceedings to adjudicate any issues arising hereunder, the party or parties to such legal proceedings who substantially prevail shall be entitled to reimbursement of their attorneys' fees, costs, expenses and disbursements (including the fees and expenses of expert and fact witnesses) reasonably incurred or made by the substantially prevailing parties in preparing to bring suit, during suit, on appeal, on petition for review, and in enforcing any judgment or award, from the party or parties who do not substantially prevail.

14. **Entire Agreement.** This Agreement is the final and complete expression of the agreement of the parties on all these subjects. This Agreement may not be modified, interpreted, amended, waived or revoked orally, but only by a writing signed by all parties. This Agreement supersedes and replaces all prior agreements, discussions and representations on all these subjects, all of which are merged into, and superseded by, this Agreement. No party is entering into this Agreement in reliance on any oral or written promises, inducements, representations, understandings, interpretations or agreements other than those contained in this Agreement and the Exhibits hereto.

15. The Parties acknowledge that they have had full opportunity to review, confer, and discuss this Agreement with legal counsel and that their respective legal counsel has advised that this Agreement is valid, enforceable, and legal in all respects and that the undersigned individuals have full authority to execute this Agreement on behalf of the respective Parties.

16. **No Admission.** Nothing contained in this Agreement shall constitute an admission of error, wrongdoing, liability, or any other kind, by any of the parties to this Agreement or by any persons or entities released or covered by this Agreement; provided, however, it is expressly understood

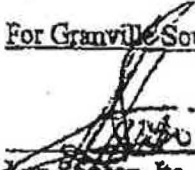
//
//
//

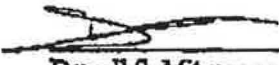
Initials

A box containing handwritten initials, possibly 'JL' or 'JD', with a signature line extending to the right.

and agreed that this paragraph shall in no way bar any party from filing a claim, demand, or lawsuit for specific performance of the terms and conditions of this Agreement or for damages arising out of breach of the terms and conditions of this Agreement.

DATED this ____ day of _____, 2000.

For Granville Southern Corporation:

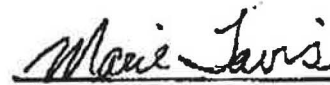

Ken Johnson, Its _____
Dated: _____


Darrell S. Mitsunaga, WSBA 12992
Reed McClure, Attorneys for Appellants
Granville Southern Corporation, and
Donald and Marie Tavis

For Donald and Marie Tavis:

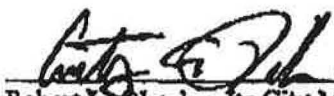

Donald Tavis

Dated: 3/28/03

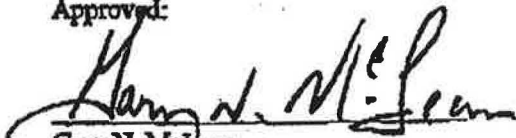

Marie Tavis

Dated: 3/28/03

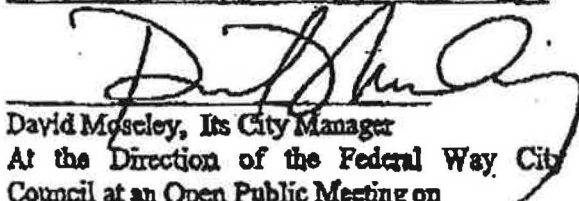
For Defendant/ Respondent City of Des Moines:


Robert L. Olander, Its City Manager
At the Direction of the Des Moines City Council
at an Open Public Meeting on May 11, 2000,
Dated: August 18, 2000

Approved:

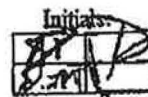

Gary N. McLean
Des Moines City Attorney
21630 11th Avenue South, Suite C
Des Moines, WA 98198

For Defendant/Respondent City of Federal Way:


David Moseley, Its City Manager
At the Direction of the Federal Way City
Council at an Open Public Meeting on
July 18, 2000
Dated: Aug. 28, 2000

Approved:


Bob C. Sterbank, WSBA No. 19514
Federal Way Interim City Attorney
33530 First Way South
Federal Way, WA 98003-5006

Initials


RECEIVED
DEC 2 1974

Exhibit A

SETTLEMENT AGREEMENT, WAIVER, AND RELEASE

Granville Southern Corporation, Donald and Marie
Tavis, and the Cities of Des Moines, and Federal Way

PARCEL A:

THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE
SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 22 NORTH, RANGE 4 EAST,
W.M., IN KING COUNTY, WASHINGTON;

PARCEL B:

THAT PORTION OF THE NORTH 219.70 FEET OF THE NORTHWEST QUARTER
OF THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 22 NORTH, RANGE
4 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING WEST OF STATE
HIGHWAY.

PARCEL C:

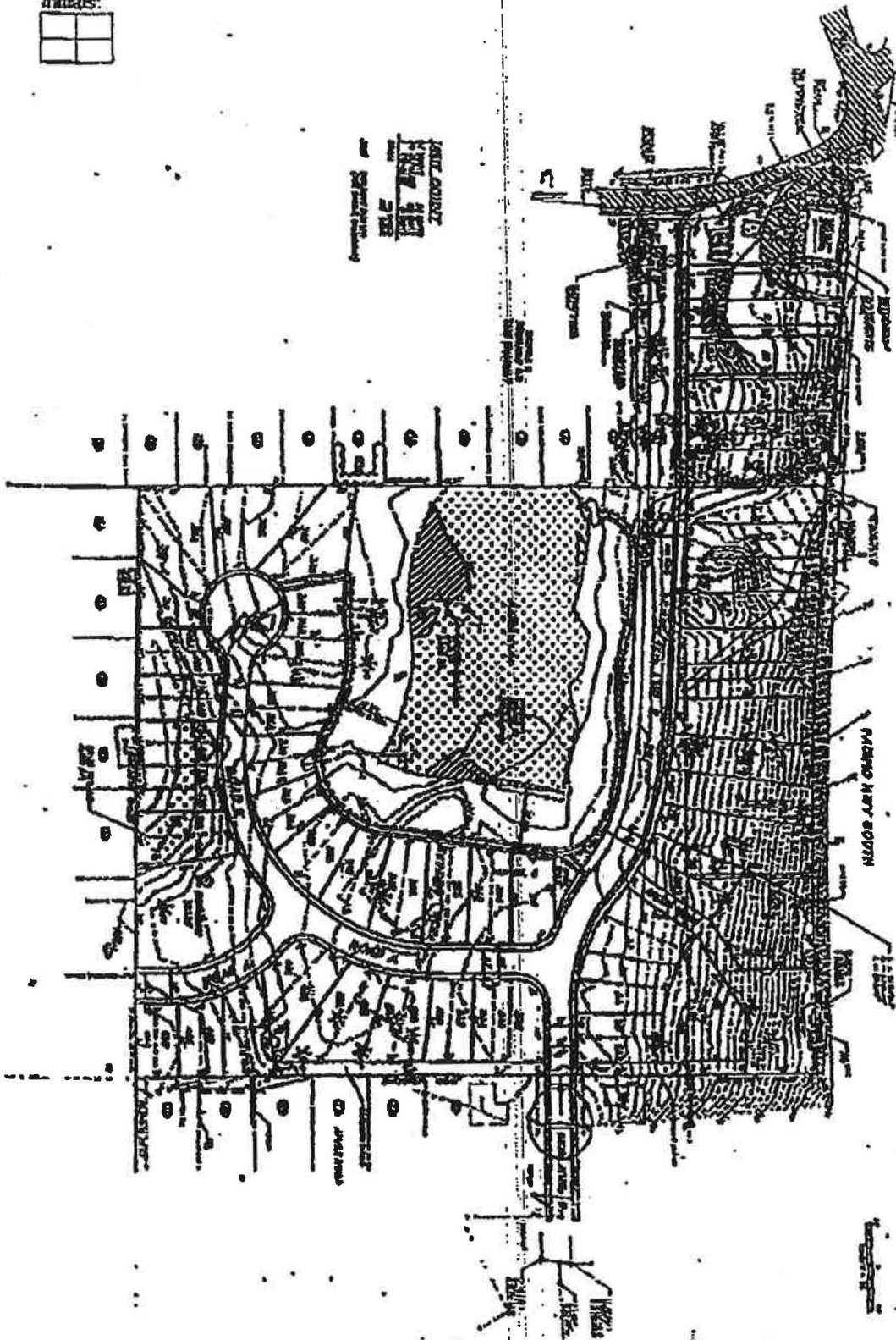
THAT PORTION OF THE SOUTH 219.70 FEET OF THE NORTH 439.40 FEET OF
THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 33,
TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON,
LYING WESTERLY OF STATE ROAD NO. 1 (PACIFIC HIGHWAY SOUTH).

PARCEL D:

THE SOUTH 219.74 FEET OF THE NORTH HALF OF THE NORTHWEST QUARTER
OF THE SOUTHWEST QUARTER LYING WEST OF THE STATE ROAD, SECTION
33, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY,
WASHINGTON.

Handwritten signature: HNM/BGR/D.J.M.T.

JAN COURT
FEB 1967
278
JAN 1967



STC. DE JVR. DE LG. NOK. 4 DE 1414

M.T.

Q. I.

1854

U. 1. 11

ILLUSTRATIVE SITE PLAN

1. **PROJECT NAME:** ILLINOIS STATE UNIVERSITY
 2. **PROJECT NUMBER:** 100-100000
 3. **PROJECT LOCATION:** CHICAGO, ILLINOIS
 4. **PROJECT DESCRIPTION:** ILLINOIS STATE UNIVERSITY
 5. **PROJECT STATUS:** PLANNING
 6. **PROJECT OWNER:** ILLINOIS STATE UNIVERSITY
 7. **PROJECT CONTACT:** ILLINOIS STATE UNIVERSITY
 8. **PROJECT DATE:** 100-100000
 9. **PROJECT DURATION:** 100-100000
 10. **PROJECT BUDGET:** 100-100000
 11. **PROJECT RISK:** 100-100000
 12. **PROJECT IMPACT:** 100-100000
 13. **PROJECT BENEFITS:** 100-100000
 14. **PROJECT CHALLENGES:** 100-100000
 15. **PROJECT OPPORTUNITIES:** 100-100000
 16. **PROJECT RISKS:** 100-100000
 17. **PROJECT MITIGATIONS:** 100-100000
 18. **PROJECT MONITORING:** 100-100000
 19. **PROJECT EVALUATION:** 100-100000
 20. **PROJECT REPORT:** 100-100000
 21. **PROJECT REVIEW:** 100-100000
 22. **PROJECT CLOSURE:** 100-100000
 23. **PROJECT ARCHIVE:** 100-100000
 24. **PROJECT LEGACY:** 100-100000
 25. **PROJECT FUTURE:** 100-100000
 26. **PROJECT IMPACT:** 100-100000
 27. **PROJECT BENEFITS:** 100-100000
 28. **PROJECT CHALLENGES:** 100-100000
 29. **PROJECT OPPORTUNITIES:** 100-100000
 30. **PROJECT RISKS:** 100-100000
 31. **PROJECT MITIGATIONS:** 100-100000
 32. **PROJECT MONITORING:** 100-100000
 33. **PROJECT EVALUATION:** 100-100000
 34. **PROJECT REPORT:** 100-100000
 35. **PROJECT REVIEW:** 100-100000
 36. **PROJECT CLOSURE:** 100-100000
 37. **PROJECT ARCHIVE:** 100-100000
 38. **PROJECT LEGACY:** 100-100000
 39. **PROJECT FUTURE:** 100-100000
 40. **PROJECT IMPACT:** 100-100000
 41. **PROJECT BENEFITS:** 100-100000
 42. **PROJECT CHALLENGES:** 100-100000
 43. **PROJECT OPPORTUNITIES:** 100-100000
 44. **PROJECT RISKS:** 100-100000
 45. **PROJECT MITIGATIONS:** 100-100000
 46. **PROJECT MONITORING:** 100-100000
 47. **PROJECT EVALUATION:** 100-100000
 48. **PROJECT REPORT:** 100-100000
 49. **PROJECT REVIEW:** 100-100000
 50. **PROJECT CLOSURE:** 100-100000
 51. **PROJECT ARCHIVE:** 100-100000
 52. **PROJECT LEGACY:** 100-100000
 53. **PROJECT FUTURE:** 100-100000
 54. **PROJECT IMPACT:** 100-100000
 55. **PROJECT BENEFITS:** 100-100000
 56. **PROJECT CHALLENGES:** 100-100000
 57. **PROJECT OPPORTUNITIES:** 100-100000
 58. **PROJECT RISKS:** 100-100000
 59. **PROJECT MITIGATIONS:** 100-100000
 60. **PROJECT MONITORING:** 100-100000
 61. **PROJECT EVALUATION:** 100-100000
 62. **PROJECT REPORT:** 100-100000
 63. **PROJECT REVIEW:** 100-100000
 64. **PROJECT CLOSURE:** 100-100000
 65. **PROJECT ARCHIVE:** 100-100000
 66. **PROJECT LEGACY:** 100-100000
 67. **PROJECT FUTURE:** 100-100000
 68. **PROJECT IMPACT:** 100-100000
 69. **PROJECT BENEFITS:** 100-100000
 70. **PROJECT CHALLENGES:** 100-100000
 71. **PROJECT OPPORTUNITIES:** 100-100000
 72. **PROJECT RISKS:** 100-100000
 73. **PROJECT MITIGATIONS:** 100-100000
 74. **PROJECT MONITORING:** 100-100000
 75. **PROJECT EVALUATION:** 100-100000
 76. **PROJECT REPORT:** 100-100000
 77. **PROJECT REVIEW:** 100-100000
 78. **PROJECT CLOSURE:** 100-100000
 79. **PROJECT ARCHIVE:** 100-100000
 80. **PROJECT LEGACY:** 100-100000
 81. **PROJECT FUTURE:** 100-100000
 82. **PROJECT IMPACT:** 100-100000
 83. **PROJECT BENEFITS:** 100-100000
 84. **PROJECT CHALLENGES:** 100-100000
 85. **PROJECT OPPORTUNITIES:** 100-100000
 86. **PROJECT RISKS:** 100-100000
 87. **PROJECT MITIGATIONS:** 100-100000
 88. **PROJECT MONITORING:** 100-100000
 89. **PROJECT EVALUATION:** 100-100000
 90. **PROJECT REPORT:** 100-100000
 91. **PROJECT REVIEW:** 100-100000
 92. **PROJECT CLOSURE:** 100-100000
 93. **PROJECT ARCHIVE:** 100-100000
 94. **PROJECT LEGACY:** 100-100000
 95. **PROJECT FUTURE:** 100-100000
 96. **PROJECT IMPACT:** 100-100000
 97. **PROJECT BENEFITS:** 100-100000
 98. **PROJECT CHALLENGES:** 100-100000
 99. **PROJECT OPPORTUNITIES:** 100-100000
 100. **PROJECT RISKS:** 100-100000
 101. **PROJECT MITIGATIONS:** 100-100000
 102. **PROJECT MONITORING:** 100-100000
 103. **PROJECT EVALUATION:** 100-100000
 104. **PROJECT REPORT:** 100-100000
 105. **PROJECT REVIEW:** 100-100000
 106. **PROJECT CLOSURE:** 100-100000
 107. **PROJECT ARCHIVE:** 100-100000
 108. **PROJECT LEGACY:** 100-100000
 109. **PROJECT FUTURE:** 100-100000
 110. **PROJECT IMPACT:** 100-100000
 111. **PROJECT BENEFITS:** 100-100000
 112. **PROJECT CHALLENGES:** 100-100000
 113. **PROJECT OPPORTUNITIES:** 100-100000
 114. **PROJECT RISKS:** 100-100000
 115. **PROJECT MITIGATIONS:** 100-100000
 116. **PROJECT MONITORING:** 100-100000
 117. **PROJECT EVALUATION:** 100-100000
 118. **PROJECT REPORT:** 100-100000
 119. **PROJECT REVIEW:** 100-100000
 120. **PROJECT CLOSURE:** 100-100000
 121. **PROJECT ARCHIVE:** 100-100000
 122. **PROJECT LEGACY:** 100-100000
 123. **PROJECT FUTURE:**

Exhibit C

**ZONING AND BUILDING DEVELOPMENT AGREEMENT FOR DEVELOPMENT OF
THE GRANVILLE PROPERTY LEGALLY DESCRIBED IN ATTACHED EXHIBIT 1**

- (1) Zoning shall be RA 3600;
- (2) Development shall be processed and approved as a Planned Unit Development or Subdivision pursuant to Des Moines Code consistent with the terms and conditions set forth herein and the Settlement Agreement, Waiver, and Release to which this document is appended as Exhibit C.
- (3) Except as otherwise stated herein, the number of units/lots shall not exceed 84 consisting of a mix of 21 single-family residences, 30 duplexes, and 1 triplex. The mix of single-family residences, duplexes and triplexes shall be subject to minor modification at the request of the Applicant, subject to the approval of Des Moines and Federal Way, as provided in paragraph (17) below. Ownership of each unit/lot shall be in fee simple ownership.
- (4) The number, location, type, configuration, and size of units and lots; size, location and configuration of detention; roadway location, width, and length; buffers; general layout; open space; and all other improvements shall be as depicted in the Illustrative Site Plan, dated March 17, 2000, prepared by Peterson Consulting Engineers under Job Number COPD-0001 and attached as Exhibit B ("Illustrative Site Plan") to the Settlement Agreement, Waiver, and Release to which this document is attached as Exhibit C. Minor deviations from said Illustrated Site Plan may occur subject to the approval of Des Moines and Federal Way, provided that the number of lots, units, and building sites shall remain unchanged, except that the number of lots, units, and building sites may be reduced, at the sole discretion of the applicant. The detention, drainage, and road layout reflected in the Illustrative Site Plan may also be changed, subject to approval by the City of Des Moines and the City of Federal Way. In case of conflicts between the Illustrative Site Plan and Des Moines' or Federal Way's zoning, codes, regulations, and land use controls, this Zoning and Development Agreement and the Illustrative Site Plan shall control.
- (5) The City of Des Moines shall provide the City of Federal Way a minimum of fourteen (14) days within which to review and comment on the Illustrative Site Plan prior to the City of Des Moines' approval of the Pacific Place Planned Unit Development. Prior to approval, the City of Des Moines shall also provide the City of Federal Way a minimum of fourteen (14) days within which to review and comment on any applications for building permits for individual buildings/lots within that portion of the Granville Property contained within the City of Federal Way PAA, as defined by the PAA Interlocal Agreement between the City of Des Moines and the City of Federal Way in effect at the time of any application for a building permit on any lot located on the east side of 15th Avenue South. To implement this paragraph, the City of Des Moines shall provide copies of the Illustrative Site Plan, or building permit application, as applicable.

D.J.M.
[Signature]

to the City of Federal Way, and the 14-day review and comment period shall commence upon Federal Way's receipt of the Plan or application, as applicable.

- (6) The City of Des Moines shall provide to the City of Federal Way 15% of the application fee amount charged to the applicant for any building permit for lots on the Granville Property and located east of 15th Avenue South. Payment to Federal Way shall be made within 30 days of Des Moines' receipt of the fee from the applicant.
- (7) 15th Ave. S. as depicted in said Illustrative Site Plan shall be dedicated to the City of Des Moines as a public street;
- (8) Development applications that are consistent with the terms of this development agreement shall be deemed to have incorporated design considerations and mitigation measures that are sufficient to avoid probable, significant environmental impacts; accordingly, such application shall be subject to issuance of an MDNS, with no additional conditions other than as set forth herein, and no EIS will be required;
- (9) Previous studies related to wetlands and drainage on the site prepared and submitted to King County under King County Permit Application 807C0270 shall be deemed fully adequate and sufficient and shall be used. No additional studies shall be required. The Parties agree that the documentation provided to the Parties as part of said King County Permit Application 807C0270 is as follows:

Environmental Site Assessment by Earth Consultants, Inc. dated September 23, 1997
 Road Variance by DBM Consulting Engineers dated February 19, 1998
 Subdivision Guarantee by First American Title Insurance Company order no. 345322-5
 Wildlife Study by Wetland Rescues, Inc. dated March 25, 1998
 Level One Drainage Report by Eastside Consultants, Inc. dated August 25, 1997
 Geotechnical Report by J. Keith Cross, P.E., dated May 31, 1997
 Traffic Report by David Hamlin & Associates and subsequent addendums
 Level Two Downstream Analysis by DBM Consulting Engineers dated June 8, 1998
 Technical Information Report By DBM Consulting Engineers dated October 24, 1997
 Wetland Report by Wetland Resources, Inc. dated July 29, 1997.

- (10) The Level 2 Flow Control Standard, as defined in the 1998 King County Surface Water Design Manual, shall apply to detention facilities for the project. No downstream analysis shall be required. The detention facilities for the project shall only need to meet additional drainage demands created by this project. This project shall not be responsible for solving preexisting drainage issues faced by downhill property owners;
- (11) School impact fees (for Federal Way School District) will be collected;
- (12) WSDOT must approve (in writing) any and all entrances and exits proposed to/from Highway 99; provided, however, that Applicant agrees not to seek approval for such entrances and/or exits to or from Highway 99 from the Granville Property;

D.L.M.T.
 H.M.C.

- (13) The market store will be demolished if the property upon which it is located is included within the project;
- (14) The City of Des Moines shall apply, and the applicant and its successors, heirs and assigns shall comply with, the City of Federal Way sign code, Federal Way City Code Sections 22-1596 – 22-1629, or as amended, with respect to that portion of the Granville Property within the City of Federal Way's PAA, as defined by the PAA Interlocal Agreement between the City of Des Moines and the City of Federal Way in effect at the time Granville or its successors, heirs or assigns seek to construct or install any sign.
- (15) The City of Des Moines shall apply, and the applicant shall comply with, the City of Federal Way street development requirements for that portion of Pacific Highway South abutting the Granville Property; provided, however, that the applicant shall not be required to construct street improvements for that portion Pacific Highway South. To mitigate the traffic impacts from the Pacific Place development, however, Granville shall do the following:
- (a) Pay its pro rata share of the cost of the future Transportation Improvement Project ("TIP") known as SR 99 from S. 284th to S. 272nd, which pro rata share is hereby determined to be \$21,000. Said payment shall be made to the City of Federal Way at the time Granville receives final Planned Unit Development or Subdivision approval from the City of Des Moines and the expiration of all applicable appeal periods. Pursuant to Federal Way City Code Section 19-46(b)(5), for a period of twenty (20) years from the date of this Agreement, Granville hereby waives for itself and its successors and assigns the right to any refund of its pro rata share of the SR 99 from S. 284th to S. 272nd.
 - (b) Pay its pro rata share of the cost of the TIP known as S. 288th / SR 99 Intersection Improvements, which pro rata share is hereby determined to be \$21,000. Said payment shall be made to the City of Federal Way at the time Granville receives final Planned Unit Development approval from the City of Des Moines and the expiration of all applicable appeal periods. [Note: I added this to clarify timing of payment.] Pursuant to Federal Way City Code Section 19-46(b)(5), for a period of seven (7) years from the date of this Agreement, Granville hereby waives for itself and its successors and assigns the right to any refund of its pro rata share of the S. 288th / SR 99 Intersection Improvements. *Payment*
 - (c) As part of the Pacific Place planned unit development, dedicate to the City of Federal Way a 15-foot right-of-way along the east boundary of the Granville Property lying immediately adjacent to and fronting along Pacific Highway South. Provided, that such right-of-way dedication may, at the sole discretion of Granville, contain a reversionary clause, causing the dedicated property, or any portion thereof, to revert back, be re-conveyed, or otherwise transferred to Granville, its heirs, successors, and assigns in the event that the City of Federal Way determines, in its sole discretion, that the dedicated property, or any portion

D.L.M.
U. N. 1-202

thereof, is not needed for right-of-way purposes at the time of construction of the SR 99 S. 284th - S. 272nd TIP.

- (16) In recognition of recreation space dedication requirements customarily imposed by the City of Des Moines, the City of Des Moines expressly agrees that Granville shall be given full credit for the total square footage of the 10-foot wide easement granted for construction of the walkway surrounding the wetland located in the middle of said project and the costs of construction for the sidewalk along said walkway.
- (17) In deference to the recreation space improvement requirements customarily imposed by the City of Des Moines, Granville shall make a one-time payment in the amount of \$47,500.00 to the City of Des Moines. As consideration for Granville's agreement to make the full payment of \$47,500.00, the City of Des Moines agrees to increase the maximum number of units allowed by one, to 85, which the Applicant, in its sole discretion, can apply to create a single-family residence, duplex, or triplex; provided, however, if Granville is unable or chooses not to increase the maximum number of lots in the final plan to 85, it shall only be responsible for making a one-time payment in the amount of \$35,000.00 to the City of Des Moines as its mitigation fee for recreation space improvements. Arrangements for said payment, if applicable, and written confirmation in the form of an amended site plan reflecting Granville's decision regarding the final number of units and their final placement and configuration, shall be made on or before the date on which the Des Moines City Council is scheduled to vote on Granville's proposed Planned Unit Development as described herein. Said payment, however, shall not be due until final approval of the Planned Unit Development or Subdivision as described herein and the expiration of all appeal periods.
- (18) At the time of construction of 15th Avenue South, Granville shall install traffic calming devices, in the form of speed humps, on 15th Avenue South within the proposed Pacific Place site and within the Applewood subdivision. The number, location and design of the speed humps shall be as determined by the City of Des Moines and City of Federal Way Public Works Directors, and set forth by Granville on the engineering / construction plans for 15th Avenue South.
- (19) No mitigation fees or improvements shall be required as a condition of approval of the Planned Unit Development by the City of Des Moines, except as set forth herein; provided, however, that this agreement does not alter or waive Granville's legal obligation to comply with any and all applicable laws regarding impact fees imposed by the Federal Way School District.

D.L. MT
11.11.11

RESOLUTION NO. 1069

A RESOLUTION OF THE CITY OF DES MOINES, WASHINGTON approving the preliminary Planned Unit Development (hereinafter "PUD") subdivision entitled Pacific Heights, (hereinafter, the "subdivision") subject to conditions specified herein.

WHEREAS, Pacific West LLC. (hereinafter, the applicant) filed an application for a preliminary PUD subdivision, and

WHEREAS, the subdivision is located within the cities of Des Moines and Federal Way and Unincorporated King County, and

WHEREAS, the subdivision is located on property within the RS-7200: Residential Single Family 7,200 zone and RM-1800: 1 unit per 1,800 square feet, and

WHEREAS, the *Settlement Agreement, Waiver and Release By and Between Granville Southern Corporation, Donald & Marie Tavis, and the Cities of Des Moines and Federal Way* (hereinafter "the Agreement") governs the review and approval of the subdivision, and

WHEREAS, PUDs are authorized in all single family residential zones, and

WHEREAS, an environmental checklist for the subdivision was submitted to the City of Des Moines and was reviewed by the SEPA responsible official for the City of Des Moines, and

WHEREAS, the State Environmental Protection Act (SEPA) official issued a Mitigated Determination of Non-Significance for the subdivision on December 4, 2007, and

WHEREAS, the environmental documents have been available for review with the subdivision application during the review process, and

WHEREAS, the Des Moines Planning Agency reviewed the subdivision at its regular meeting on February 4, 2008, and

WHEREAS, the Des Moines Planning Agency, after review of the PUD subdivision at a public meeting and consideration of the information provided by administration, recommended approval of the application subject to conditions contained in the Agreement, and

WHEREAS, the City Council, in a public hearing on February 28, 2008 considered the PUD subdivision, the environmental documents, recommendations from the Planning Agency, and information provided by administration; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:

Sec. 1. Findings of Fact. The Findings of Fact set forth in Exhibit 1, attached hereto and incorporated by this reference, are adopted in full by the City Council in support of its decision to approve the subdivision subject to the conditions established by the Agreement.

Resolution No. 1069
Page 2 of 4

Sec. 2. Decision criteria. The criteria used in making the decision is limited to ensuring the project is consistent with the terms of the Agreement included as Exhibit 2. The City Council also finds that the subdivision is in compliance with the required criteria, and is consistent with DMMC 17.16.130 and 18.52.010 as set forth in the Findings of Fact in Exhibit 1, adopted above.

Sec 3. Approved modifications to the Illustrative Site Plan identified as Exhibit B to the Agreement. Consistent with the provisions established by the Agreement the following modifications to the Illustrative Site Plan are approved:

(1) 14th Place South shall be widened from 30 feet to 50 feet to allow the installation of curb, gutter and sidewalk on both sides of the street.

(2) Tract C shall be relocated to the intersection of 15th Avenue South and South 282nd Street to provide a safer access point to the private street.

(3) The Right-of-Way Width for 15th Avenue South shall be allowed to be reduced from 56 feet to 50 feet since the additional ROW is not required for the necessary improvements.

(4) The Lots north and south of Road A shall be allowed to be configured on the revised site plan due to the relocation of the access road.

(5) Lots 60 - 63 and the detention tract shall be allowed to be switch locations.

(6) The widths of the lots that front on 15th Avenue South along the western perimeter of the proposed development shown on the revised site plan shall be allowed to be approximately 10 feet narrower than the lot widths shown for the same area on the illustrative site plan contained as Exhibit B of the Agreement.

(7) The width of the street frontage for lots 46 - 51 on the revised site plan shall be allowed to be approximately 2 - 5 feet narrower than the width of the street frontage shown on the illustrative site plan contained as Exhibit B of the Agreement.

(8) The City Council encourages the Developer to evaluate solutions to the turn-around concerns for the proposed South 282nd Street to include deletion of South 282nd Street and reconfiguration of Tract B and Lots 60 - 70 or other viable options to eliminate the turn around concerns with South 282nd Street.

Sec.4. Approved deviations. Consistent with the provisions of DMMC 17.36.010, DMMC 18.52.100, and DMMC 18.86.090 the following deviations are approved:

Subdivision Layout and Design Deviations (chapter 17.36 DMMC)

(1) Minimum lot width and depth ratio shall not be met for lots 6, 32, 63, 66 and 77.

(2) All lots shall meet the 20' minimum frontage requirement except for lots 7 - 8 and 47 - 53.

Resolution No. 1069
Page 3 of 4

(3) Corner lots shall not 5 feet wider than the 60 foot minimum width established by zoning.

(4) Road B shall be allowed to be over 150 feet in length as measured from the centerline of Road A and will not have a cul-de-sac turnaround.

(5) The right-of-way width for 15th Avenue shall be allowed to be reduced to 50 feet from 60 feet.

(6) Road A shall be allowed to be a cul-de-sac road over 450 feet in length.

Zoning Code Deviations (Chapter 18.08 DMMC)

(1) Minimum lot area will be less than 7,200 square feet on all lots. The average lot size within the PUD is 3,779 square feet.

(2) Minimum lot width of 60 feet shall be allowed to be reduced to a minimum of 30 feet for all lots.

(3) The minimum front yard setback shall be allowed to be reduced from 20 feet to 15 feet for all lots.

(4) The side yard setbacks for all lots will shall be allowed to be five feet on one side and zero on the another side; except for lot 65 which shall be allowed to have zero on both sides and lots 27 - 37 and 77 which shall be allowed to have five feet on both sides.

(5) The minimum rear yard setback shall be allowed to be reduced from twenty (20) feet to ten (10) feet on all lots except 7 - 10, 13 - 30, 48 - 51, 56 - 59, and 67.

PUD Buffer Deviations (Chapter 18.52 DMMC)

(1) The required twenty foot perimeter buffer/yard area will not be reduced except for lots 8, 52 - 55, and 63 - 66.

Sec. 5. Approval subject to conditions. The subdivision is approved subject to the conditions established by the Agreement.

Sec. 6. Approved Preliminary PUD Subdivision Plat Map. The Preliminary Modified Subdivision in Exhibit 3, attached hereto and incorporated by this reference, is adopted in full by the City Council.

Sec. 7. Compliance with other law. Nothing in this resolution shall be construed as excusing the applicant from compliance with all federal, state, or local statutes, ordinances, or regulations applicable to this subdivision other than as expressly set forth herein.

Sec. 8. Resolution attached to approval documents. A certified copy of this resolution, along with the herein referenced Findings of Fact and preliminary plat, shall be attached to and become a part of the evidence of the approval of said preliminary PUD subdivision to be delivered to the applicant.

Resolution No. 1069
Page 4 of 4

Sec. 9. Distribution of Resolution following Council action. Certified or conformed copies of this Resolution shall be delivered to the following:

- (1) City of Des Moines Planning, Building and Public Works Department;
- (2) South King Fire and Rescue; and
- (3) The City of Des Moines City Clerk.

Sec 10. Distribution of resolution by planning official. Within five days following adoption of this Resolution, the planning official shall distribute the Resolution to the applicant, and to each person who submitted timely written or oral testimony to the City Council for inclusion in the record.

ADOPTED BY the City Council of the City of Des Moines, Washington this 27th day of March, 2008 and signed in authentication thereof this 27th day of March, 2008.


MAYOR

APPROVED AS TO FORM:


City Attorney

ATTEST:


City Clerk

FINDINGS OF FACT

RESOLUTION NO. 1069, EXHIBIT 1

March 27, 2008

The Des Moines City Council, upon review of an application requesting approval of a preliminary Planned Unit Development (PUD) subdivision allowing for the subdivision of 77 single residential lots and in consideration of information communicated during a public hearing hereby finds:

(A) Settlement Agreement

1. On August 13, 1998, the Boundary Review Board (hereinafter "BRB") issued a decision approving the annexation of property known as the Redondo Riviera Annexation Area into the City of Des Moines.
2. The area of the Redondo Riviera included property owned by Granville Southern and Donald and Marie Tavis.
3. At the time of the BRB decision, Granville Southern had a vested application for a project known as Pacific Place (King County Permit Application 807C0270) filed and under review with King County, which consisted of 120 Unit Condominium.
4. After the annexation was approved, Granville Southern filed an appeal of the BRB's annexation decision with the King County Superior Court.
5. In order to settle the litigation, the Cities of Des Moines and Federal Way, along with Granville Southern and Donald and Marie Tavis entered into the *Settlement Agreement, Waiver and Release By and Between Granville Southern Corporation, Donald & Marie Tavis, and the Cities of Des Moines and Federal Way* (hereinafter "the Agreement") in 2000.
6. The Agreement established guidelines for future review of the proposed Pacific Place development. As part of the Agreement the City agreed to limit the future review of the project to determining if it was consistent with the terms of the Agreement.
7. No real and sustained progress was made on the application until late 2005 when Granville Southern sold the project.
8. In the early part of 2006, the City of Des Moines was contacted by the new owners of the property and project, Pacific West LLC, to discuss the steps needed to complete the Pacific Place project.
9. The new owners renamed the project Pacific Heights.

(B) Subdivision

1. Except where otherwise stated herein, the proposed plat is consistent with the applicable provisions of the comprehensive plan, zoning code, and other City policies and regulations.

Resolution No. 1069, Exhibit 1
Page 2 of 6

- a. The developer has submitted the requisite permit applications for a preliminary plat utilizing the provisions of a subdivision codified in Chapter 17.16 of the Des Moines Municipal Code.
- b. PUD's are authorized in all single family residentially zoned areas.
- c. The application specifically requests to divide 12.98 acres of underdeveloped land into 77 lots for residential use.
- d. The zoning for the property is RS-7200: Residential Single Family 7,200 and RM-1800: 1 unit per 1,800 square feet.
- e. The Preferred Land Use Map for the Des Moines Comprehensive Plan indicates the subject property as preferred for single family developments.
- f. The Preferred Land Use Map for the City of Federal Way indicated that the subject property as preferred for high density single family and multifamily.
- g. The subdivision contains tracts for wetlands and required buffers; therefore, the number of lots within the subdivision shall be determined under the provisions for limited density transfer for environmentally sensitive areas codified in DMMC 18.86.090.
- h. The limited density transfer calculation of potential dwelling units in residential development proposals is determined by the ratio of developable area to undevelopable critical area of the development site.
- i. The limited density formula is designed to provide compensation for the preservation of critical areas, flexibility in design, and consistent treatment of different types of development proposals.
- j. The maximum number of lots within the subdivision under with the limited density transfer calculations is demonstrated below:

$$\left[\frac{\text{(Developable Area)}}{\text{(Minimum Lot Area/DU)}} \right] + \left[\frac{\text{(Undevelopable Area)}}{\text{(Minimum Lot Area/DU)}} \right] \times \text{(Development Factor)} = \text{Maximum Number of Dwelling Units.}$$

$$\left[\frac{124,746}{1,800} \right] + \left[\frac{297,765}{7,200} \right] + \left[\frac{140,719}{7,200} \times 0.24 \right] = \text{Maximum Dwelling Units.}$$

$$69.30 + 41.36 + [19.54 \times 0.24] = \text{Maximum Dwelling Units}$$

$$110.66 + 4.69 = \text{Maximum Dwelling Units}$$

115.35= Maximum Dwelling Units

115 = Maximum Dwelling Units

- k. The reduction in the minimum lot size is consistent with the intent of the zoning code.
 - l. Development Services issued a written notice of complete application on December 4, 2006 providing official notice that the application met the procedural submittal requirements established by the City.
 - m. Development Services issued a notice of preliminary PUD subdivision application on August 6, 2007 and October 8, 2007.
 - n. A Mitigated Determination of Nonsignificance (MDNS) was issued in accordance with WAC 197-11-350 and DMMC 16.04.110 on December 4, 2007.
 - o. A public comment period for the MDNS was provided from December 4, 2007 to December 31, 2007 for the State Environmental Protection Agency (SEPA) determination.
 - p. The Des Moines Planning Agency met on February 28, 2008 to review the PUD subdivision. The Planning Agency recommended that the Council approve the preliminary PUD subdivision. The Planning Agency voted 7-0 in support of this recommendation.
 - q. Development Services provided a notice of public hearing on February 11, 2008 and provided an additional public comment period from February 11, 2008 to February 28, 2008.
 - r. At the February 28, 2008 March 27, 2008 public hearings, an opportunity to receive public comment was afforded to that applicant and interested citizens regarding the proposed modified subdivision.
2. There are adequate provisions for drainage ways, rights-of-way, sidewalks, easements, water supplies, sanitary waste, fire protection, power service, parks, playgrounds and schools. These provisions include:
- a. The City has reviewed Traffic Analysis prepared by Transportation David Hamlin & Associates, dated May 1998.
 - b. The City has reviewed Traffic Analysis prepared by Mirai Associates, LLC. dated November 2007.
 - c. The subdivision is served by the development of 2 new public rights-of-way and one private access tract.
 - d. The road layout provides connections to 15th Avenue South and South 279th Street.

Resolution No. 1069, Exhibit 1
Page 4 of 6

- e. Deviations to the street standards are authorized by DMMC 18.52.100 and DMMC 17.36.010.
 - f. The City has reviewed a Technical Information Report prepared by the Peterson Consulting Engineers dated November 2006 and revised March 2007 and June 2007.
 - g. The proposed surface water detention vault is consistent with the 1998 King County Surface Water Design Manual.
 - h. All electrical and communication systems shall be installed underground by the applicant. Existing above-ground electrical and communication systems located in all rights-of-way adjoining the proposed subdivision and extending from the subdivision to the nearest utility pole also shall be undergrounded.
 - i. New fire hydrants within the subdivision will be installed by the applicant. Installation of the new fire hydrant will be done concurrently with the installation of the required right-of-way improvements.
 - j. All sewer, water, or surface water utilities will be within the ROW or contained within the appropriate easement.
 - k. The applicant is required to make a payment in lieu of park dedication. The total in-lieu fee for the proposed subdivision would be based on the Agreement and paid at the time that applicant applies for approval of the final plat.
 - l. As part of the project the applicant will be required to pay school impact fees to the Federal Way School District in the amount of \$96,180.
3. The proposed plat design will serve the public use and interest and is consistent with the public health, safety, and welfare.
- a. The proposed preliminary subdivision provides for coordinated development with adjoining properties or future development of adjoining properties including by providing additional connections to the east.
 - b. Copies of the site plan were reviewed by the City of Federal Way during the review of the preliminary PUD since part of the project is within the jurisdictional boundaries of the City of Federal Way.

(C) Planned Unit Development (PUD)

- 1. DMMC § 18.52.100 allows for the reduction in lot width and lot size requirements for PUD subdivisions as long as the density within the PUD subdivision does not exceed density for the net development for the underlying zone.

Resolution No. 1069, Exhibit 1
Page 5 of 6

2. DMMC § 18.52.100(5) defines net development as the area remaining after subtracting the area set aside for churches, schools, or commercial use from the total development area.

Net Development Area divided by Minimum Lot
Area/DU = Maximum Number of Dwelling Units

$(124,746 / 1,800) + (438,484 / 7,200) = \text{Maximum}$
Number of Dwelling Units

$(69.30) + (60.90) = \text{Maximum Number of Dwelling}$
Units

130.20 = Maximum Number of Dwelling Units

130 = Maximum Number of Dwelling Units

3. In the RS-7200 zone, there are approximately 6.05 dwelling units per acre and in the RM-1800 zone, there are approximately 24.2 dwelling units per acre. After excluding the proposed and existing rights-of-way and all access tracts, there are approximately 6.80 dwelling units per acre within RS-7200 portion and 9.52 dwelling units per acre within the RM-1800 portion.
4. Within the PUD, 3.69 acres or 28% of the site have been preserved as open space and 6.68 acres or 53% of the site is utilized for home construction. The remaining 2.56 acres or 19% is utilized as public right-of-way or private access tracts.

(D) WETLAND "A"

1. The City has reviewed a wetland delineation report prepared by Wetland Resources, Inc. dated July 29, 1997.
2. Wetland A is a 60,000 square feet wetland and is considered a palustrine, unconsolidated bottom, mud, permanently flooded, excavated. Vegetation within the wetlands is dominated by willows, salmonberry, yellow iris, lady fern, and speedwell.
3. Wetland A is considered "Significant" wetland since the wetland is greater than one acre in size and has two vegetation classes.
4. Pursuant to DMMC § 18.86.070, "Significant" wetlands require a 100 foot buffer measured from the wetland edge.
5. The wetland buffer will be reduced to 70 feet.
6. The applicant will construct a trail within the wetland buffer consistent with DMMC § 18.86.100
7. The wetland and corresponding buffer will be placed within a separate tract and deeded to the City at the time of final plat.

Resolution No. 1069, Exhibit 1
Page 6 of 6

(E) WETLAND "B"

1. The City has reviewed a wetland delineation report prepared by Wetland Resources, Inc. dated July 29, 1997.
2. Wetland B is a 5,550 square feet palustrine, scrub-shrub, broad-leaved deciduous, saturated wetland. Vegetation within Wetland B is represented by salmonberry, sedges, and skunk cabbage.
3. Wetland B is considered an "Important" wetland due to its size (less than 1 acre), presence of two vegetative classes, and the fact that it is not located in a stream corridor.
4. Pursuant to DMMC § 18.86.070 "Important" wetlands require a 35 foot buffer measured from the wetland edge.
5. Past development activity has altered the hydrology of the wetland. Additionally, the majority of the buffer on the north side of the wetland will be removed as a result of the new road alignment discussed above.
6. Wetland B will be filled and mitigated at a minimum ratio of 1:1 on site through the creation of wetland adjacent to Wetland A.

DEC 7 0 00 00

SETTLEMENT AGREEMENT, WAIVER AND RELEASE
 By And Between Granville Southern Corporation, Donald & Marie Tavis, AND The Cities Of
 Des Moines And Federal Way

WHEREAS, the City of Des Moines ("Des Moines") is a municipal corporation organized under the laws of the State of Washington and has authority to enact laws and enter into agreements to promote the health, safety, and welfare of its citizens, and thereby control the use and development of property within its jurisdiction;

WHEREAS, the City of Federal Way ("Federal Way") is a municipal corporation organized under the laws of the State of Washington and has authority to enact laws and enter into agreements to promote the health, safety, and welfare of its citizens, and thereby control the use and development of property within its jurisdiction;

WHEREAS, Granville Southern Corporation ("Granville Southern") and the marital Community of Donald and Marie Tavis ("Tavis") (Granville Southern and Tavis shall hereafter collectively be referred to as "Granville") (Note: The term "Granville" expressly includes "Coastal Pacific Development, Inc.," the name of the applicant reflected in some King County files associated with the above-referenced application) have filed an application with King County under King County Permit Application 807C0270 for approval of a development project on real property ("Granville Property") known as Pacific Place. King County's code, regulations, and land use controls, therefore, apply to said project. Tavis owns the Granville Property which is legally described in Exhibit A attached hereto. Granville Southern is under contract to purchase the Granville Property from Donald and Marie Tavis;

WHEREAS, King County's code, regulations, and land use controls applicable to the Granville Property development project known as Pacific Place filed with King County under King County Permit Application 807C0270 would allow for more lots/units, less open space, and other development than would be currently allowed under Des Moines' code, regulations, and land use controls;

WHEREAS, on or August 13, 1998, the BRB issued a decision approving the annexation of property known as the Redondo Riviera Annexation Area, File No. 2016, which included a portion of the subject real property into the City of Des Moines;

WHEREAS, Granville filed an appeal of the BRB's annexation decision with the King County Superior Court under Cause No. 98-2-19694-7KNT. Subsequently, the court conducted a hearing and rendered a written decision and judgment;

WHEREAS, an appeal and cross-appeal were filed from said King County Superior Court's decision in the Washington State Court of Appeals, Division I, under Cause No. 44528-6-1;

WHEREAS, the parties wish to settle the litigation, development issues, and the underlying dispute, including, but not limited to, compromise of the applicable code, regulations, and land use

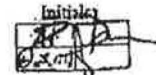
Initials


EXHIBIT 2

controls applicable to the Granville Property development project known as Pacific Place filed with King County under King County Permit Application 807C0270, in a mutually satisfactory manner;

WHEREAS, this Settlement Agreement, Waiver and Release (hereafter "Agreement") is entered into by and between Granville, Des Moines and Federal Way (collectively referenced as "Parties") to resolve legal matters arising out of lawsuits known as Granville Southern Corporation, et al. v. The Washington Boundary Review Board for King County, et al. King County Superior Court Cause No. 98-2-19694-7 KNT, and Granville Southern Corp. et al. v. The City of Federal Way, et al. Court of Appeals Case No. 44528-6-1, and to foreclose further claims, damages, requests for injunctive relief or disputes among the parties related to said matters.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

1. Granville, on its own behalf, its heirs, agents, business partners, investors, optionees/optionsors, executors, administrators and assigns, does hereby release: each and every one of the Parties, their successors and assigns, officers, officials, employees, agents and attorneys, both individually and in their representative capacities, from any and all claims, appeals or disputes between Granville and the Parties, either jointly or severally, that have been or could have been raised in Granville Southern Corporation, et al. v. The Washington Boundary Review Board for King County, et al. King County Superior Court Cause No. 98-2-19694-7 KNT, or any appeals related thereto, from any claims for damages arising out of or related to the City of Des Moines' Redondo Riviera annexation, and from the actions of any party in litigating the above-referenced cases or in entering into this Agreement. Provided, however, it is expressly understood and agreed that this paragraph shall in no way bar any party from filing a claim, demand, or lawsuit for specific performance of the terms and conditions of this Agreement or for damages arising out of breach of the terms and conditions of this Agreement.
2. Granville warrants and affirms that it has not sold, transferred, or otherwise assigned all or any of its interests in any of its appeals, claims, requests for relief or causes of action released herein and that it is solely empowered to waive and release said matters. In support of this representation and in support of this Agreement, Granville agrees to indemnify and hold harmless any and all of the Parties and any persons or entities covered by this Agreement and any affiliated person, company or entity for any damages, costs, attorneys' fees or other expenses in defending any action brought by Granville, or anyone claiming to hold an interest from Granville based on the appeals, claims or causes of action encompassed by this Agreement.
3. As consideration for this Agreement, and upon the approval and execution of this Agreement by the Parties, Granville agrees to dismiss with prejudice its cross-appeal now pending before the Washington Court of Appeals entitled Granville Southern Corp. et al. v. The City of Federal Way, et al. Court of Appeals for the State of Washington, No. 44528-6-1, execute a stipulation providing for vacation of the Final Judgment previously entered by the Honorable Dean Lum in Granville Southern Corporation, et al. v. The Washington Boundary Review Board for King County, et al. King County Superior Court Cause No. 98-2-19694-7 KNT, and dismiss with

Initials
[Signature]
[Signature]

prejudice its appeal in Cause No. 98-2-19694-7 KNT. Granville, however, shall not be required to withdraw any applications for land use development on the Granville Property that are now pending and vested with King County, including, but, not limited to, the application filed under King County Permit Application 807C0270. Granville, however, agrees that upon annexation of a portion of the Granville Property to Des Moines, as set forth herein, that King County Permit Application 807C0270 shall be transferred to Des Moines for processing subject to the terms and conditions of this Agreement. It is expressly understood that subsequent building and other permits sought for units to be constructed on the subject property following annexation of a portion of the Granville Property into the City of Des Moines shall be processed under the land use and building codes of the City of Des Moines, subject to the terms and conditions of this Agreement.

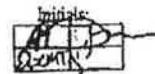
4. As consideration for the mutual promises set forth herein, the Parties collectively agree as follows:

- A. The Parties shall jointly seek relief, modification, satisfaction, or vacation of that judgment filed in King County Superior Court under Cause No. 98-2-19694-7KNT, on the basis that all issues, claims, and defenses relative to said Judgment have been compromised as reflected in this Agreement. Des Moines shall further proceed to modify, finalize, and obtain all appropriate approvals for the Redondo Riviera Annexation Area, File No. 2016 so that the portion of the Granville Property lying westerly of the eastern boundary of 15th Ave. South as depicted in the "Illustrative Site Plan" attached hereto as Exhibit B shall be annexed into Des Moines. The Parties shall fully support the annexation of the said portion of the Granville Property into Des Moines.
- B. Within 15 days of the date of this Agreement, Des Moines and Federal Way will commence the public process for amending their Interlocal Agreement, dated December 16, 1996, relating to their respective Potential Annexation Area Designation. Following completion of the public process, the Des Moines and Federal Way City Councils will consider a proposed amended PAA Interlocal Agreement which sets the PAA boundary between Des Moines and Federal Way at the eastern edge of the right-of-way of 15th Avenue South, as depicted on the Illustrative Site Plan attached hereto as Exhibit B.
- C. Prior to the annexation of any portion of the Granville Property to Des Moines or Federal Way, Des Moines and Federal Way shall adopt pre-annexation zoning and other land use controls and regulations in conformance with the "Illustrative Site Plan" attached hereto as Exhibit B, and the Zoning and Building Development Agreement attached hereto as Exhibit C. In case of conflicts between the Illustrative Site Plan and Building Development Agreement and Des Moines', King County's, or Federal Way's zoning, codes, regulations, and land use controls, the

Initials:
[Signature] [Signature]
[Signature]

"Illustrative Site Plan" attached hereto as Exhibit B, and the Zoning and Building Development Agreement attached hereto as Exhibit C shall control.

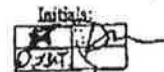
- D. Upon annexation of said portion of the Granville Property to Des Moines, King County shall transfer to Des Moines the processing of Granville's application for the multi-family development project on the entire Granville Property known as Pacific Place Condominiums, King County Permit Application 807C0270. Said King County Permit Application 807C0270 shall be deemed modified at the request of King County, Des Moines, and Federal Way to conform with the "Illustrative Site Plan" attached hereto as Exhibit B, and the Zoning and Building Development Agreement attached hereto as Exhibit C. Provided, that said King County Permit Application 807C0270 shall not be withdrawn from King County, shall not be deemed to have been modified at the request of the applicant, and said transfer shall have no impact on the vested status of said King County Permit Application 807C0270.
- E. Upon said transfer, said King County Permit Application 807C0270 shall be processed by Des Moines in conformance with the terms and conditions of this Agreement. It is expressly understood that subsequent building and other permits sought for units to be constructed on the subject property following annexation of a portion of the Granville Property into the City of Des Moines shall be processed under the land use and building codes of the City of Des Moines, subject to the terms and condition herein. By this Agreement, Federal Way consents to the transfer of said application to the City of Des Moines, and the processing of said application and/or subsequent permit applications on the Granville Property by Des Moines, subject to the terms and conditions herein.
- F. Upon annexation of said portion of the Granville Property to Des Moines, Des Moines shall process Granville's application for the development project on the entire Granville Property known as Pacific Place Condominiums, King County Permit Application 807C0270. Granville shall not be required to submit, file, or produce any additional documentation, reports, or information other than previously provided to the Parties as part of said King County Permit Application 807C0270. It is expressly understood that this limit on additional documentation shall not be construed to apply to any permit application filed after annexation of any portion of the Granville Property into the City of Des Moines, except for any such permit application that is required for approval as a Planned Unit Development or Subdivision of the development project on the entire Granville Property known as Pacific Place Condominiums, King County Permit Application 807C0270. The Parties agree that the documentation provided to the Parties as part of said King County Permit Application 807C0270 is as follows:

Initials:


- Environmental Site Assessment by Earth Consultants, Inc. dated September 23, 1997
- Road Variance by DBM Consulting Engineers dated February 19, 1998
- Subdivision Guarantee by First American Title Insurance Company Order No. 345322-5
- Wildlife Study by Wetland Resources, Inc. dated March 25, 1998
- Level One Drainage Report by Eastside Consultants, Inc. dated August 25, 1997
- Geotechnical Report by J. Keith Cross, P.E., dated May 31, 1997
- Traffic Report by David Hamlin & Associates and subsequent addendums
- Level Two Downstream Analysis by DBM Consulting Engineers dated June 8, 1998
- Technical Information Report By DBM Consulting Engineers dated October 24, 1997
- Wetland Report by Wetland Resources, Inc. dated July 29, 1997.

Des Moines' review, processing, and approval of said application shall be limited to a determination that said project complies with the "Illustrative Site Plan" attached hereto as Exhibit B, the Zoning and Building Development Agreement attached hereto as Exhibit C, and other conditions stated herein. Moreover, Des Moines shall not review, rescind, or otherwise modify approvals previously granted by King County under said King County Permit Application 807C0270. Except as otherwise stated herein, Des Moines shall further approve said project subject only and exclusively, without modification, amendment, or addition, to the terms and conditions of the "Illustrative Site Plan" attached hereto as Exhibit B, the Zoning and Building Development Agreement attached hereto as Exhibit C, and other conditions stated herein. Des Moines and Federal Way shall not object to, challenge, or otherwise oppose development of the Granville Property in accordance with the "Illustrative Site Plan" attached hereto as Exhibit B, the Zoning and Building Development Agreement attached hereto as Exhibit C, and other conditions stated herein. Provided, that Des Moines shall provide Federal Way a minimum of fourteen (14) days within which to review and comment on Des Moines' approval of Granville's Pacific Place project.

- G. The terms and conditions of the "Illustrative Site Plan" attached hereto as Exhibit B, the Zoning and Building Development Agreement attached hereto as Exhibit C, and other conditions stated herein can be amended, modified, or changed upon the express written approval of Granville (its successors or assigns), Des Moines, and Federal Way.

Initials:


- H. All process, review, and approval of subsequent applications filed relative to the entire Granville Property, including but not limited to, grading, drainage, construction related, and building permits, shall be by Des Moines and subject to the code, regulations, and requirements of Des Moines, except as otherwise set forth in the terms and conditions of the "Illustrative Site Plan" attached hereto as Exhibit B, the Zoning and Building Development Agreement attached hereto as Exhibit C, and other conditions stated herein. Provided, however, that Federal Way shall be given a two week period following submittal to review and comment on said applications.
- I. The City of Federal Way will dismiss its appeal now pending before the Washington Court of Appeals entitled Granville Southern Corp. et al. v. The City of Federal Way, et al. Court of Appeals for the State of Washington, No. 44528-6-1
- J. Each and every of the named Parties agree to prepare, revise, support and/or execute pleadings, notices, and contemporaneous agreements, as well as conduct and/or participate in any public hearings, deemed necessary to effectuate the intent and purposes of this Agreement.
- K. Each and every one of the named Parties agree to support, uphold and defend this Agreement in the event of an appeal, challenge, or lawsuit seeking to set aside, modify, or render void or invalid this Agreement. In the event, that this Agreement is set aside, modified, voided, or invalidated by a court of law, Granville shall be free, in its discretion, to proceed with its application for approval under King County Permit Application 807C0270, as initially filed.
5. Although King County is not a signing party to this Agreement, the County is encouraged to support and take actions consistent herewith.
6. The Parties understand and agree that the consideration the Parties herein agree to undertake, in the form of compliance with the above-referenced conditions, constitutes the Parties' total offer to resolve and settle any and all appeals, claims, damages or disputes among the parties hereto and that it is full, complete and adequate consideration and compensation for each other's acceptance of the terms stated herein and that no Party will receive any other or further consideration under the terms of this Agreement other than that expressly set forth herein.
7. In the event of that failure or inability of the Parties to comply with the terms and conditions of this Agreement, Granville shall be free, in its discretion, to proceed with its application for approval under King County Permit Application 807C0270, as initially filed. In such an event, the City of Federal Way and the City of Des Moines are likewise free to comment upon, object to, oppose, challenge and/or appeal development of the Granville Property under King County Permit Application 807C0270, as initially filed or as subsequently modified.

Initials:


8. This Agreement may be executed in identical counterparts. For purposes of recording, filing, or providing copies of this Agreement, the counterpart signature pages (and any other pages that are specially marked by the signatories) may be inserted into one of the counterparts to create a single original or copy of the entire agreement.

10. This Agreement shall be interpreted under the laws of the State of Washington.

11. The Parties hereby authorize their attorneys to (1) execute the appropriate notices to effect dismissal(s) with prejudice of any and all appeals or claims the Parties have initiated against any other Party(ies) or any persons covered by this Agreement; and (2) take all necessary and proper steps to ensure that such notices are filed on execution of this Agreement.

12. This Agreement shall be binding upon the heirs, successors and assigns of the parties. Each of the signatories represents and warrants that he or she has the authority to sign for his or her represented entity.

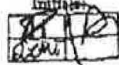
13. **Attorneys' Fees.** Should it be necessary for any party to this Agreement to initiate legal proceedings to adjudicate any issues arising hereunder, the party or parties to such legal proceedings who substantially prevail shall be entitled to reimbursement of their attorneys' fees, costs, expenses and disbursements (including the fees and expenses of expert and fact witnesses) reasonably incurred or made by the substantially prevailing parties in preparing to bring suit, during suit, on appeal, on petition for review, and in enforcing any judgment or award, from the party or parties who do not substantially prevail.

14. **Entire Agreement.** This Agreement is the final and complete expression of the agreement of the parties on all these subjects. This Agreement may not be modified, interpreted, amended, waived or revoked orally, but only by a writing signed by all parties. This Agreement supersedes and replaces all prior agreements, discussions and representations on all these subjects, all of which are merged into, and superseded by, this Agreement. No party is entering into this Agreement in reliance on any oral or written promises, inducements, representations, understandings, interpretations or agreements other than those contained in this Agreement and the Exhibits hereto.

15. The Parties acknowledge that they have had full opportunity to review, confer, and discuss this Agreement with legal counsel and that their respective legal counsel has advised that this Agreement is valid, enforceable, and legal in all respects and that the undersigned individuals have full authority to execute this Agreement on behalf of the respective Parties.

16. **No Admission.** Nothing contained in this Agreement shall constitute an admission of error, wrongdoing, liability, or any other kind, by any of the parties to this Agreement or by any persons or entities released or covered by this Agreement; provided, however, it is expressly understood

//
//
//

Initialed


and agreed that this paragraph shall in no way bar any party from filing a claim, demand, or lawsuit for specific performance of the terms and conditions of this Agreement or for damages arising out of breach of the terms and conditions of this Agreement.

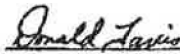
DATED this ____ day of _____, 2000.

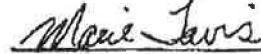
For Granville Southern Corporation:


Ken Gibson, its
Dated: _____

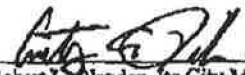

Derrell S. Mitsunaga, WSBA 12992
Reed McChes, Attorneys for Appellants
Granville Southern Corporation, and
Donald and Marie Tavis

For Donald and Marie Tavis:

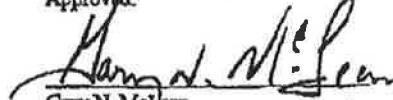

Donald Tavis
Dated: 3/28/03


Marie Tavis
Dated: 3/28/03

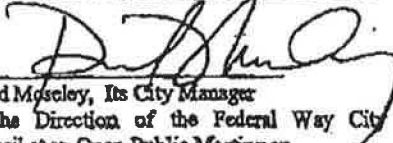
For Defendant/Respondent City of Des Moines:


Robert L. Olander, its City Manager
At the Direction of the Des Moines City Council
at an Open Public Meeting on May 11, 2010,
Dated: August 18, 2000

Approved:


Gary N. McLean
Des Moines City Attorney
21630 11th Avenue South, Suite C
Des Moines, WA 98198

For Defendant/Respondent City of Federal Way:


David Moseley, its City Manager
At the Direction of the Federal Way City
Council at an Open Public Meeting on
July 18, 2000
Dated: Aug - 21, 2000

Approved:


Bob C. Sterbank, WSBA No. 19514
Federal Way Interim City Attorney
33530 First Way South
Federal Way, WA 98003-5006

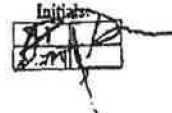
Initials


Exhibit A

RECEIVED
DEC 7 1960

SETTLEMENT AGREEMENT, WAIVER, AND RELEASE

Granville Southern Corporation, Donald and Marie
Tavis, and the Cities of Des Moines, and Federal Way

PARCEL A:

THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE
SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 22 NORTH, RANGE 4 EAST,
W.M., IN KING COUNTY, WASHINGTON;

PARCEL B:

THAT PORTION OF THE NORTH 219.70 FEET OF THE NORTHWEST QUARTER
OF THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 22 NORTH, RANGE
4 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING WEST OF STATE
HIGHWAY.

PARCEL C:

THAT PORTION OF THE SOUTH 219.70 FEET OF THE NORTH 439.40 FEET OF
THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 33,
TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON,
LYING WESTERLY OF STATE ROAD NO. 1 (PACIFIC HIGHWAY SOUTH).

PARCEL D:

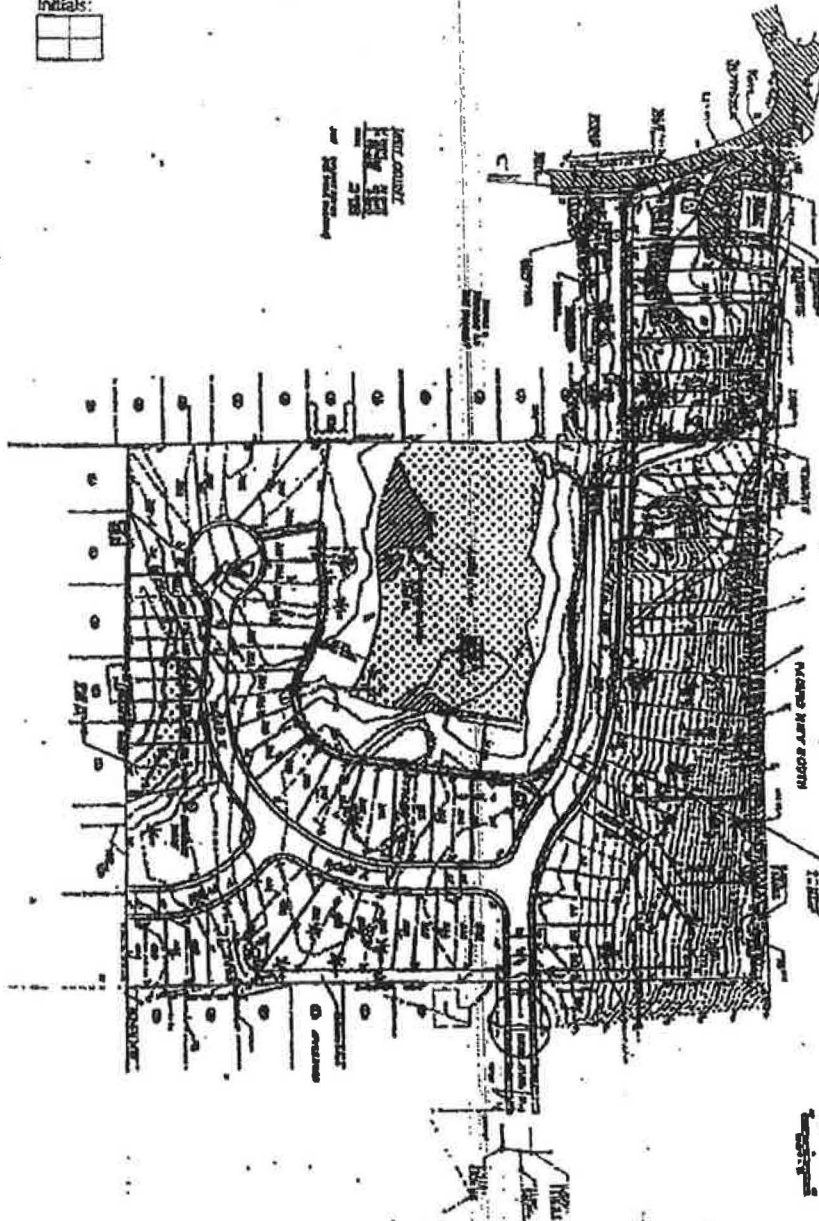
THE SOUTH 219.74 FEET OF THE NORTH HALF OF THE NORTHWEST QUARTER
OF THE SOUTHWEST QUARTER LYING WEST OF THE STATE ROAD, SECTION
33, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY,
WASHINGTON.

HMM/BC/D.J.M.T.
4

PAGE 1

Initials:

LOCAL COUNTY
SHEET NO. 1
SHEET NO. 2
SHEET NO. 3
SHEET NO. 4
SHEET NO. 5
SHEET NO. 6
SHEET NO. 7
SHEET NO. 8
SHEET NO. 9
SHEET NO. 10
SHEET NO. 11
SHEET NO. 12
SHEET NO. 13
SHEET NO. 14
SHEET NO. 15
SHEET NO. 16
SHEET NO. 17
SHEET NO. 18
SHEET NO. 19
SHEET NO. 20
SHEET NO. 21
SHEET NO. 22
SHEET NO. 23
SHEET NO. 24
SHEET NO. 25
SHEET NO. 26
SHEET NO. 27
SHEET NO. 28
SHEET NO. 29
SHEET NO. 30
SHEET NO. 31
SHEET NO. 32
SHEET NO. 33
SHEET NO. 34
SHEET NO. 35
SHEET NO. 36
SHEET NO. 37
SHEET NO. 38
SHEET NO. 39
SHEET NO. 40
SHEET NO. 41
SHEET NO. 42
SHEET NO. 43
SHEET NO. 44
SHEET NO. 45
SHEET NO. 46
SHEET NO. 47
SHEET NO. 48
SHEET NO. 49
SHEET NO. 50
SHEET NO. 51
SHEET NO. 52
SHEET NO. 53
SHEET NO. 54
SHEET NO. 55
SHEET NO. 56
SHEET NO. 57
SHEET NO. 58
SHEET NO. 59
SHEET NO. 60
SHEET NO. 61
SHEET NO. 62
SHEET NO. 63
SHEET NO. 64
SHEET NO. 65
SHEET NO. 66
SHEET NO. 67
SHEET NO. 68
SHEET NO. 69
SHEET NO. 70
SHEET NO. 71
SHEET NO. 72
SHEET NO. 73
SHEET NO. 74
SHEET NO. 75
SHEET NO. 76
SHEET NO. 77
SHEET NO. 78
SHEET NO. 79
SHEET NO. 80
SHEET NO. 81
SHEET NO. 82
SHEET NO. 83
SHEET NO. 84
SHEET NO. 85
SHEET NO. 86
SHEET NO. 87
SHEET NO. 88
SHEET NO. 89
SHEET NO. 90
SHEET NO. 91
SHEET NO. 92
SHEET NO. 93
SHEET NO. 94
SHEET NO. 95
SHEET NO. 96
SHEET NO. 97
SHEET NO. 98
SHEET NO. 99
SHEET NO. 100



APP. 42, 70A, 82, 84, 86, 88, 90, 92, 94, 96, 98, 100

M.T.
D.I.
70A
H.W.

ILLUSTRATIVE SITE PLAN

PENG
70A
70B
70C
70D
70E
70F
70G
70H
70I
70J
70K
70L
70M
70N
70O
70P
70Q
70R
70S
70T
70U
70V
70W
70X
70Y
70Z
70AA
70AB
70AC
70AD
70AE
70AF
70AG
70AH
70AI
70AJ
70AK
70AL
70AM
70AN
70AO
70AP
70AQ
70AR
70AS
70AT
70AU
70AV
70AW
70AX
70AY
70AZ
70BA
70BB
70BC
70BD
70BE
70BF
70BG
70BH
70BI
70BJ
70BK
70BL
70BM
70BN
70BO
70BP
70BQ
70BR
70BS
70BT
70BU
70BV
70BW
70BX
70BY
70BZ
70CA
70CB
70CC
70CD
70CE
70CF
70CG
70CH
70CI
70CJ
70CK
70CL
70CM
70CN
70CO
70CP
70CQ
70CR
70CS
70CT
70CU
70CV
70CW
70CX
70CY
70CZ
70DA
70DB
70DC
70DD
70DE
70DF
70DG
70DH
70DI
70DJ
70DK
70DL
70DM
70DN
70DO
70DP
70DQ
70DR
70DS
70DT
70DU
70DV
70DW
70DX
70DY
70DZ
70EA
70EB
70EC
70ED
70EE
70EF
70EG
70EH
70EI
70EJ
70EK
70EL
70EM
70EN
70EO
70EP
70EQ
70ER
70ES
70ET
70EU
70EV
70EW
70EX
70EY
70EZ
70FA
70FB
70FC
70FD
70FE
70FF
70FG
70FH
70FI
70FJ
70FK
70FL
70FM
70FN
70FO
70FP
70FQ
70FR
70FS
70FT
70FU
70FV
70FW
70FX
70FY
70FZ
70GA
70GB
70GC
70GD
70GE
70GF
70GG
70GH
70GI
70GJ
70GK
70GL
70GM
70GN
70GO
70GP
70GQ
70GR
70GS
70GT
70GU
70GV
70GW
70GX
70GY
70GZ
70HA
70HB
70HC
70HD
70HE
70HF
70HG
70HH
70HI
70HJ
70HK
70HL
70HM
70HN
70HO
70HP
70HQ
70HR
70HS
70HT
70HU
70HV
70HW
70HX
70HY
70HZ
70IA
70IB
70IC
70ID
70IE
70IF
70IG
70IH
70II
70IJ
70IK
70IL
70IM
70IN
70IO
70IP
70IQ
70IR
70IS
70IT
70IU
70IV
70IW
70IX
70IY
70IZ
70JA
70JB
70JC
70JD
70JE
70JF
70JG
70JH
70JI
70JJ
70JK
70JL
70JM
70JN
70JO
70JP
70JQ
70JR
70JS
70JT
70JU
70JV
70JW
70JX
70JY
70JZ
70KA
70KB
70KC
70KD
70KE
70KF
70KG
70KH
70KI
70KJ
70KK
70KL
70KM
70KN
70KO
70KP
70KQ
70KR
70KS
70KT
70KU
70KV
70KW
70KX
70KY
70KZ
70LA
70LB
70LC
70LD
70LE
70LF
70LG
70LH
70LI
70LJ
70LK
70LL
70LM
70LN
70LO
70LP
70LQ
70LR
70LS
70LT
70LU
70LV
70LW
70LX
70LY
70LZ
70MA
70MB
70MC
70MD
70ME
70MF
70MG
70MH
70MI
70MJ
70MK
70ML
70MM
70MN
70MO
70MP
70MQ
70MR
70MS
70MT
70MU
70MV
70MW
70MX
70MY
70MZ
70NA
70NB
70NC
70ND
70NE
70NF
70NG
70NH
70NI
70NJ
70NK
70NL
70NM
70NN
70NO
70NP
70NQ
70NR
70NS
70NT
70NU
70NV
70NW
70NX
70NY
70NZ
70OA
70OB
70OC
70OD
70OE
70OF
70OG
70OH
70OI
70OJ
70OK
70OL
70OM
70ON
70OO
70OP
70OQ
70OR
70OS
70OT
70OU
70OV
70OW
70OX
70OY
70OZ
70PA
70PB
70PC
70PD
70PE
70PF
70PG
70PH
70PI
70PJ
70PK
70PL
70PM
70PN
70PO
70PP
70PQ
70PR
70PS
70PT
70PU
70PV
70PW
70PX
70PY
70PZ
70QA
70QB
70QC
70QD
70QE
70QF
70QG
70QH
70QI
70QJ
70QK
70QL
70QM
70QN
70QO
70QP
70QQ
70QR
70QS
70QT
70QU
70QV
70QW
70QX
70QY
70QZ
70RA
70RB
70RC
70RD
70RE
70RF
70RG
70RH
70RI
70RJ
70RK
70RL
70RM
70RN
70RO
70RP
70RQ
70RR
70RS
70RT
70RU
70RV
70RW
70RX
70RY
70RZ
70SA
70SB
70SC
70SD
70SE
70SF
70SG
70SH
70SI
70SJ
70SK
70SL
70SM
70SN
70SO
70SP
70SQ
70SR
70SS
70ST
70SU
70SV
70SW
70SX
70SY
70SZ
70TA
70TB
70TC
70TD
70TE
70TF
70TG
70TH
70TI
70TJ
70TK
70TL
70TM
70TN
70TO
70TP
70TQ
70TR
70TS
70TT
70TU
70TV
70TW
70TX
70TY
70TZ
70UA
70UB
70UC
70UD
70UE
70UF
70UG
70UH
70UI
70UJ
70UK
70UL
70UM
70UN
70UO
70UP
70UQ
70UR
70US
70UT
70UU
70UV
70UW
70UX
70UY
70UZ
70VA
70VB
70VC
70VD
70VE
70VF
70VG
70VH
70VI
70VJ
70VK
70VL
70VM
70VN
70VO
70VP
70VQ
70VR
70VS
70VT
70VU
70VV
70VW
70VX
70VY
70VZ
70WA
70WB
70WC
70WD
70WE
70WF
70WG
70WH
70WI
70WJ
70WK
70WL
70WM
70WN
70WO
70WP
70WQ
70WR
70WS
70WT
70WU
70WV
70WW
70WX
70WY
70WZ
70XA
70XB
70XC
70XD
70XE
70XF
70XG
70XH
70XI
70XJ
70XK
70XL
70XM
70XN
70XO
70XP
70XQ
70XR
70XS
70XT
70XU
70XV
70XW
70XX
70XY
70XZ
70YA
70YB
70YC
70YD
70YE
70YF
70YG
70YH
70YI
70YJ
70YK
70YL
70YM
70YN
70YO
70YP
70YQ
70YR
70YS
70YT
70YU
70YV
70YW
70YX
70YY
70YZ
70ZA
70ZB
70ZC
70ZD
70ZE
70ZF
70ZG
70ZH
70ZI
70ZJ
70ZK
70ZL
70ZM
70ZN
70ZO
70ZP
70ZQ
70ZR
70ZS
70ZT
70ZU
70ZV
70ZW
70ZX
70ZY
70ZZ

Exhibit C

ZONING AND BUILDING DEVELOPMENT AGREEMENT FOR DEVELOPMENT OF
THE GRANVILLE PROPERTY LEGALLY DESCRIBED IN ATTACHED EXHIBIT 1

- (1) Zoning shall be RA 3600;
- (2) Development shall be processed and approved as a Planned Unit Development or Subdivision pursuant to Des Moines Code consistent with the terms and conditions set forth herein and the Settlement Agreement, Waiver, and Release to which this document is appended as Exhibit C.
- (3) Except as otherwise stated herein, the number of units/lots shall not exceed 84 consisting of a mix of 21 single-family residences, 30 duplexes, and 1 triplex. The mix of single-family residences, duplexes and triplexes shall be subject to minor modification at the request of the Applicant, subject to the approval of Des Moines and Federal Way, as provided in paragraph (17) below. Ownership of each unit/lot shall be in fee simple ownership.
- (4) The number, location, type, configuration, and size of units and lots; size, location and configuration of detention; roadway location, width, and length; buffers; general layout; open space; and all other improvements shall be as depicted in the Illustrative Site Plan, dated March 17, 2000, prepared by Peterson Consulting Engineers under Job Number COPD-0001 and attached as Exhibit B ("Illustrative Site Plan") to the Settlement Agreement, Waiver, and Release to which this document is attached as Exhibit C. Minor deviations from said Illustrated Site Plan may occur subject to the approval of Des Moines and Federal Way, provided that the number of lots, units, and building sites shall remain unchanged, except that the number of lots, units, and building sites may be reduced, at the sole discretion of the applicant. The detention, drainage, and road layout reflected in the Illustrative Site Plan may also be changed, subject to approval by the City of Des Moines and the City of Federal Way. In case of conflicts between the Illustrative Site Plan and Des Moines' or Federal Way's zoning, codes, regulations, and land use controls, this Zoning and Development Agreement and the Illustrative Site Plan shall control.
- (5) The City of Des Moines shall provide the City of Federal Way a minimum of fourteen (14) days within which to review and comment on the Illustrative Site Plan prior to the City of Des Moines' approval of the Pacific Place Planned Unit Development. Prior to approval, the City of Des Moines shall also provide the City of Federal Way a minimum of fourteen (14) days within which to review and comment on any applications for building permits for individual buildings/lots within that portion of the Granville Property contained within the City of Federal Way PAA, as defined by the PAA Interlocal Agreement between the City of Des Moines and the City of Federal Way in effect at the time of any application for a building permit on any lot located on the east side of 15th Avenue South. To implement this paragraph, the City of Des Moines shall provide copies of the Illustrative Site Plan, or building permit application, as applicable.

D.J.M.
[Handwritten signature]

to the City of Federal Way, and the 14-day review and comment period shall commence upon Federal Way's receipt of the Plan or application, as applicable.

- (6) The City of Des Moines shall provide to the City of Federal Way 15% of the application fee amount charged to the applicant for any building permit for lots on the Granville Property and located east of 15th Avenue South. Payment to Federal Way shall be made within 30 days of Des Moines' receipt of the fee from the applicant.
- (7) 15th Ave. S. as depicted in said Illustrative Site Plan shall be dedicated to the City of Des Moines as a public street;
- (8) Development applications that are consistent with the terms of this development agreement shall be deemed to have incorporated design considerations and mitigation measures that are sufficient to avoid probable, significant environmental impacts; accordingly, such application shall be subject to issuance of an MDNS, with no additional conditions other than as set forth herein, and no EIS will be required;
- (9) Previous studies related to wetlands and drainage on the site prepared and submitted to King County under King County Permit Application 807C0270 shall be deemed fully adequate and sufficient and shall be used. No additional studies shall be required. The Parties agree that the documentation provided to the Parties as part of said King County Permit Application 807C0270 is as follows:

Environmental Site Assessment by Earth Consultants, Inc. dated September 23, 1997
 Road Variance by DBM Consulting Engineers dated February 19, 1998
 Subdivision Guarantee by First American Title Insurance Company order no. 345322-5
 Wildlife Study by Wetland Resources, Inc. dated March 25, 1998
 Level One Drainage Report by Eastside Consultants, Inc. dated August 25, 1997
 Geotechnical Report by J. Keith Cross, P.E., dated May 31, 1997
 Traffic Report by David Hamlin & Associates and subsequent addendums
 Level Two Downstream Analysis by DBM Consulting Engineers dated June 8, 1998
 Technical Information Report By DBM Consulting Engineers dated October 24, 1997
 Wetland Report by Wetland Resources, Inc. dated July 29, 1997.
- (10) The Level 2 Flow Control Standard, as defined in the 1998 King County Surface Water Design Manual, shall apply to detention facilities for the project. No downstream analysis shall be required. The detention facilities for the project shall only need to meet additional drainage demands created by this project. This project shall not be responsible for solving preexisting drainage issues faced by downhill property owners;
- (11) School impact fees (for Federal Way School District) will be collected;
- (12) WSDOT must approve (in writing) any and all entrances and exits proposed to/from Highway 99; provided, however, that Applicant agrees not to seek approval for such entrances and/or exits to or from Highway 99 from the Granville Property;

D.J.M.T.
 [Signature]

- (13) The market store will be demolished if the property upon which it is located is included within the project.
- (14) The City of Des Moines shall apply, and the applicant and its successors, heirs and assigns shall comply with, the City of Federal Way sign code, Federal Way City Code Sections 22-1596 - 22-1629, or as amended, with respect to that portion of the Granville Property within the City of Federal Way's PAA, as defined by the PAA Interlocal Agreement between the City of Des Moines and the City of Federal Way in effect at the time Granville or its successors, heirs or assigns seek to construct or install any sign.
- (15) The City of Des Moines shall apply, and the applicant shall comply with, the City of Federal Way street development requirements for that portion of Pacific Highway South abutting the Granville Property; provided, however, that the applicant shall not be required to construct street improvements for that portion Pacific Highway South. To mitigate the traffic impacts from the Pacific Place development, however, Granville shall do the following:
- (a) Pay its pro rata share of the cost of the future Transportation Improvement Project ("TIP") known as SR 99 from S. 284th to S. 272nd, which pro rata share is hereby determined to be \$21,000. Said payment shall be made to the City of Federal Way at the time Granville receives final Planned Unit Development or Subdivision approval from the City of Des Moines and the expiration of all applicable appeal periods. Pursuant to Federal Way City Code Section 19-46(b)(5), for a period of twenty (20) years from the date of this Agreement, Granville hereby waives for itself and its successors and assigns the right to any refund of its pro rata share of the SR 99 from S. 284th to S. 272nd.
 - (b) Pay its pro rata share of the cost of the TIP known as S. 288th / SR 99 Intersection Improvements, which pro rata share is hereby determined to be \$21,000. Said payment shall be made to the City of Federal Way at the time Granville receives final Planned Unit Development approval from the City of Des Moines and the expiration of all applicable appeal periods. [Note: I added this to clarify timing of payment.] Pursuant to Federal Way City Code Section 19-46(b)(5), for a period of seven (7) years from the date of this Agreement, Granville hereby waives for itself and its successors and assigns the right to any refund of its pro rata share of the S. 288th / SR 99 Intersection Improvements. *paying*
 - (c) As part of the Pacific Place planned unit development, dedicate to the City of Federal Way a 15-foot right-of-way along the east boundary of the Granville Property lying immediately adjacent to and fronting along Pacific Highway South. Provided, that such right-of-way dedication may, at the sole discretion of Granville, contain a reversionary clause, causing the dedicated property, or any portion thereof, to revert back, be re-conveyed, or otherwise transferred to Granville, its heirs, successors, and assigns in the event that the City of Federal Way determines, in its sole discretion, that the dedicated property, or any portion

D.L.M.
4.11.12

thereof, is not needed for right-of-way purposes at the time of construction of the SR 99 S. 284th - S. 272nd TIP.

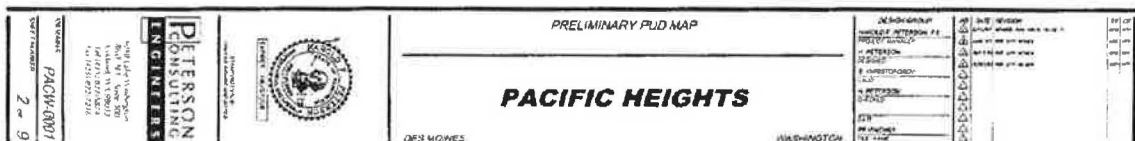
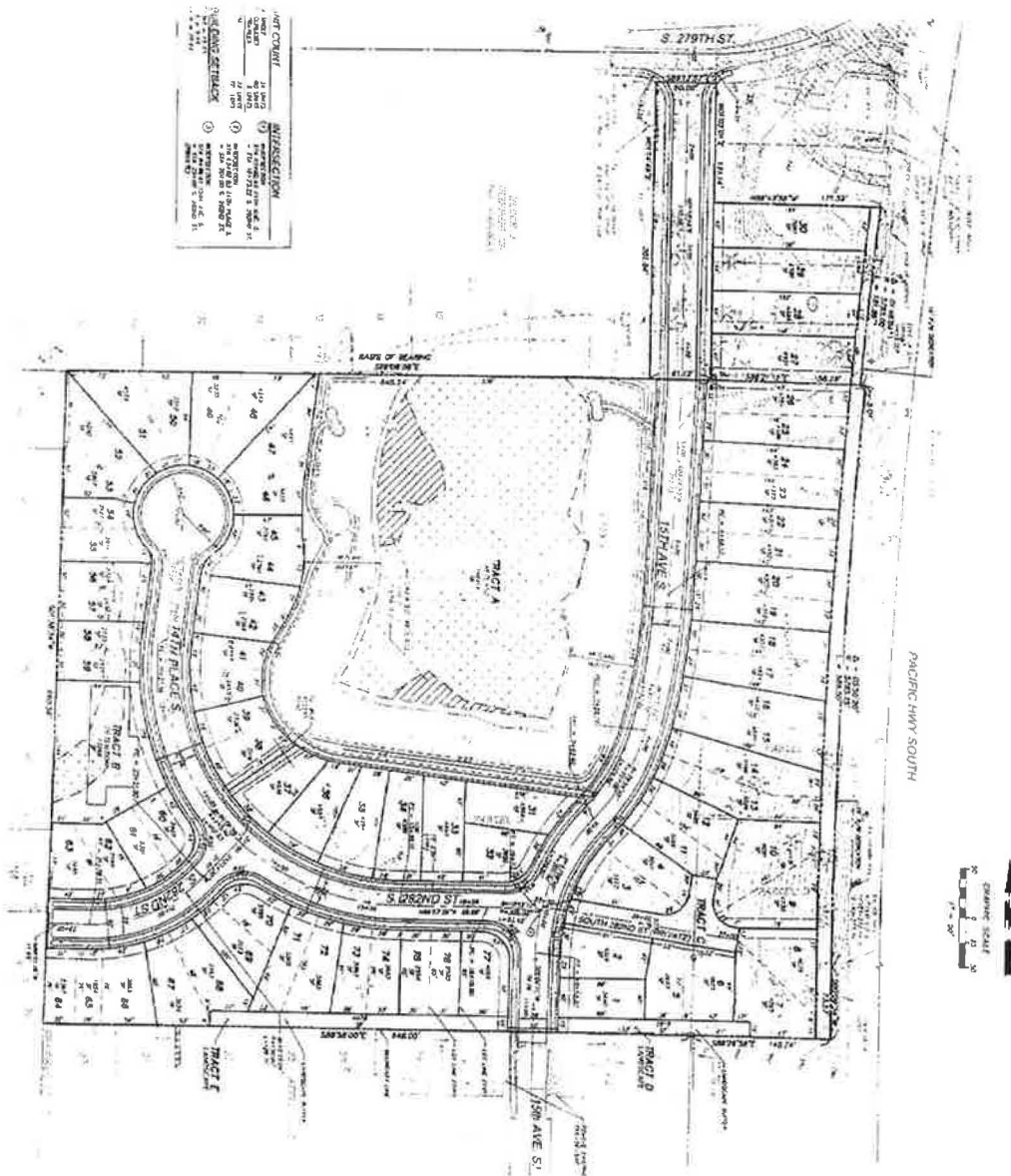
- (16) In recognition of recreation space dedication requirements customarily imposed by the City of Des Moines, the City of Des Moines expressly agrees that Granville shall be given full credit for the total square footage of the 10-foot wide easement granted for construction of the walkway surrounding the wetland located in the middle of said project and the costs of construction for the sidewalk along said walkway.
- (17) In deference to the recreation space improvement requirements customarily imposed by the City of Des Moines, Granville shall make a one-time payment in the amount of \$47,500.00 to the City of Des Moines. As consideration for Granville's agreement to make the full payment of \$47,500.00, the City of Des Moines agrees to increase the maximum number of units allowed by one, to 85, which the Applicant, in its sole discretion, can apply to create a single-family residence, duplex, or triplex; provided, however, if Granville is unable or chooses not to increase the maximum number of lots in the final plan to 85, it shall only be responsible for making a one-time payment in the amount of \$35,000.00 to the City of Des Moines as its mitigation fee for recreation space improvements. Arrangements for said payment, if applicable, and written confirmation in the form of an amended site plan reflecting Granville's decision regarding the final number of units and their final placement and configuration, shall be made on or before the date on which the Des Moines City Council is scheduled to vote on Granville's proposed Planned Unit Development as described herein. Said payment, however, shall not be due until final approval of the Planned Unit Development or Subdivision as described herein and the expiration of all appeal periods.
- (18) At the time of construction of 15th Avenue South, Granville shall install traffic calming devices, in the form of speed humps, on 15th Avenue South within the proposed Pacific Place site and within the Applewood subdivision. The number, location and design of the speed humps shall be as determined by the City of Des Moines and City of Federal Way Public Works Directors, and set forth by Granville on the engineering / construction plans for 15th Avenue South.
- (19) No mitigation fees or improvements shall be required as a condition of approval of the Planned Unit Development by the City of Des Moines, except as set forth herein; provided, however, that this agreement does not alter or waive Granville's legal obligation to comply with any and all applicable laws regarding impact fees imposed by the Federal Way School District.

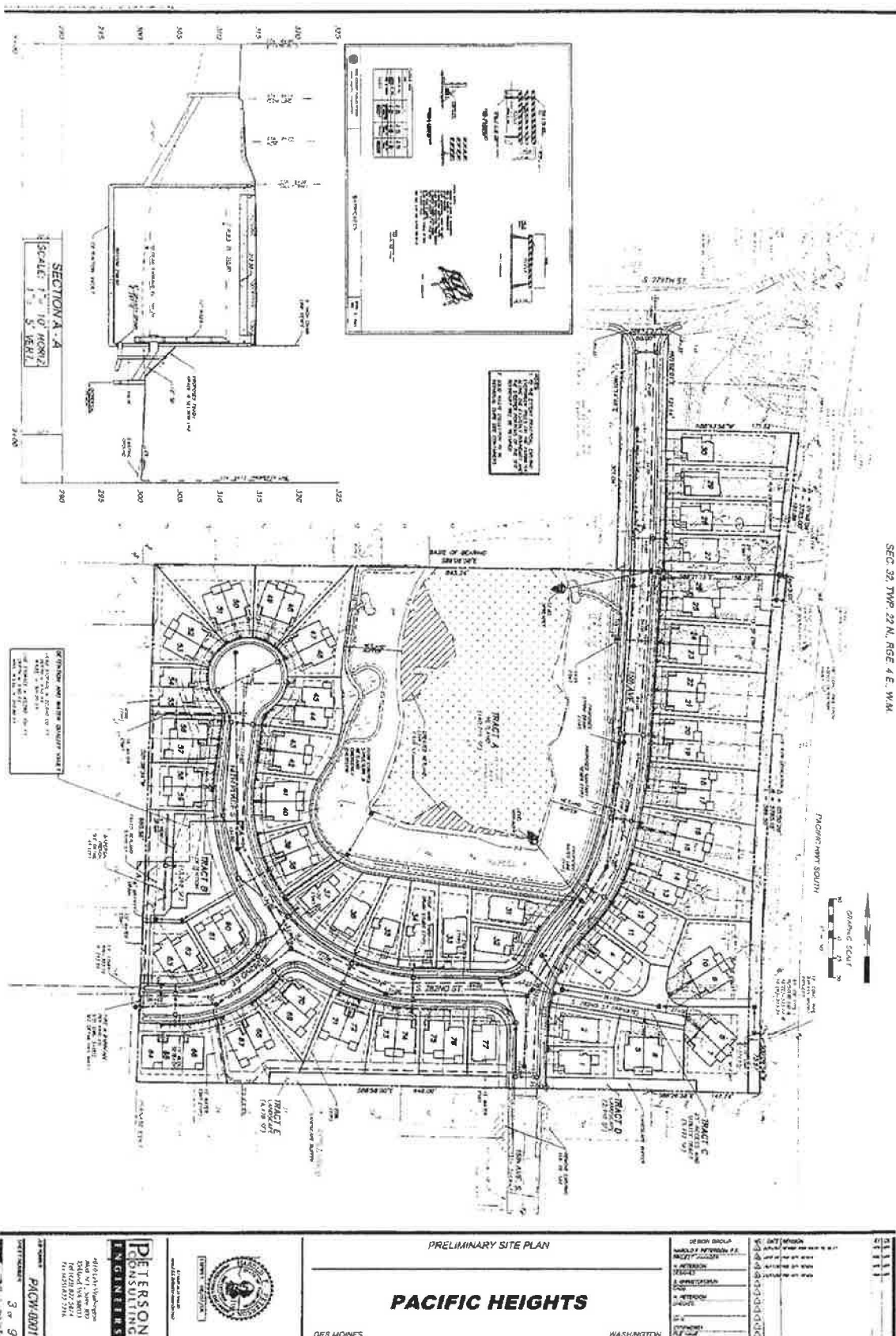
D. L. M. T.
11/11/11

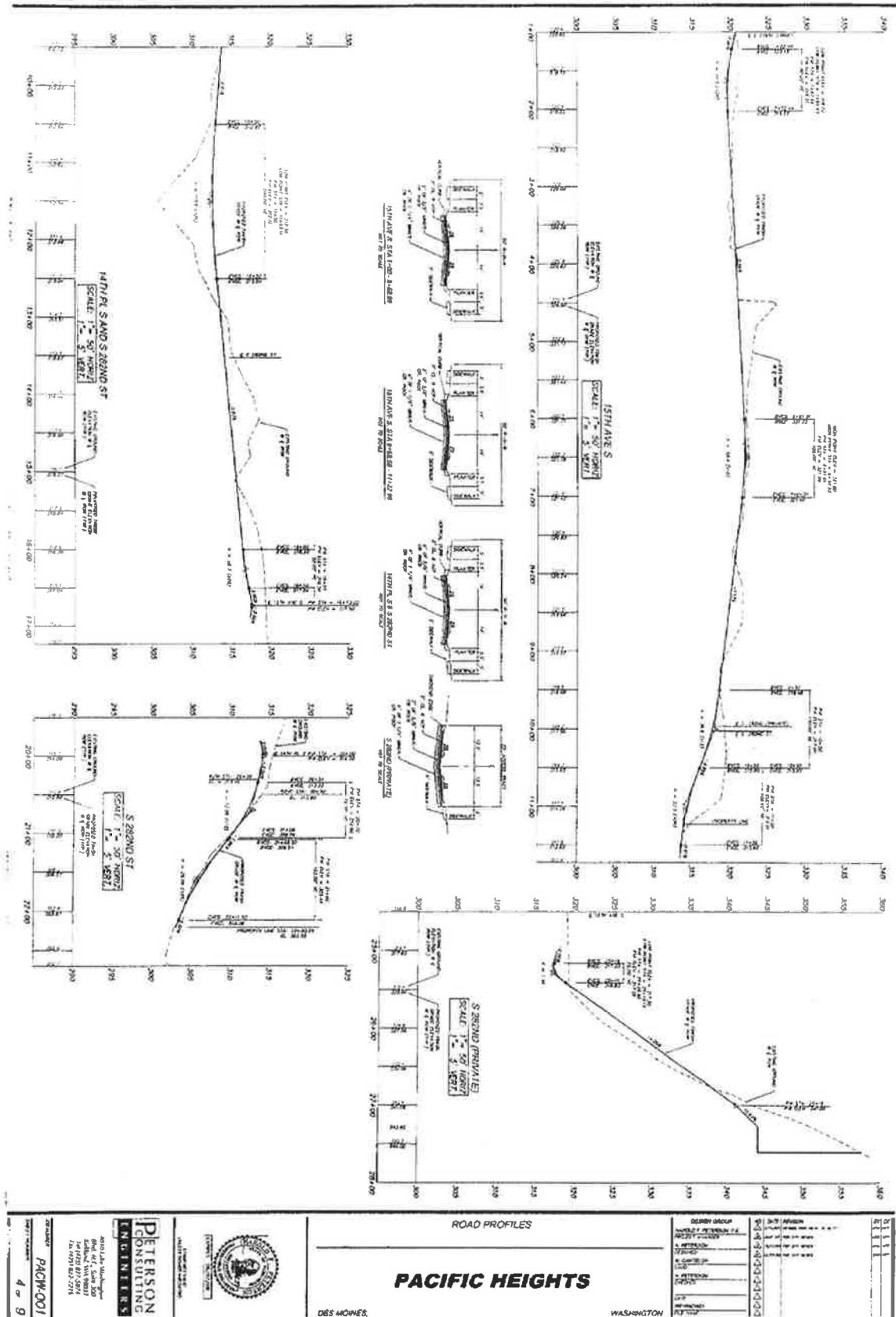


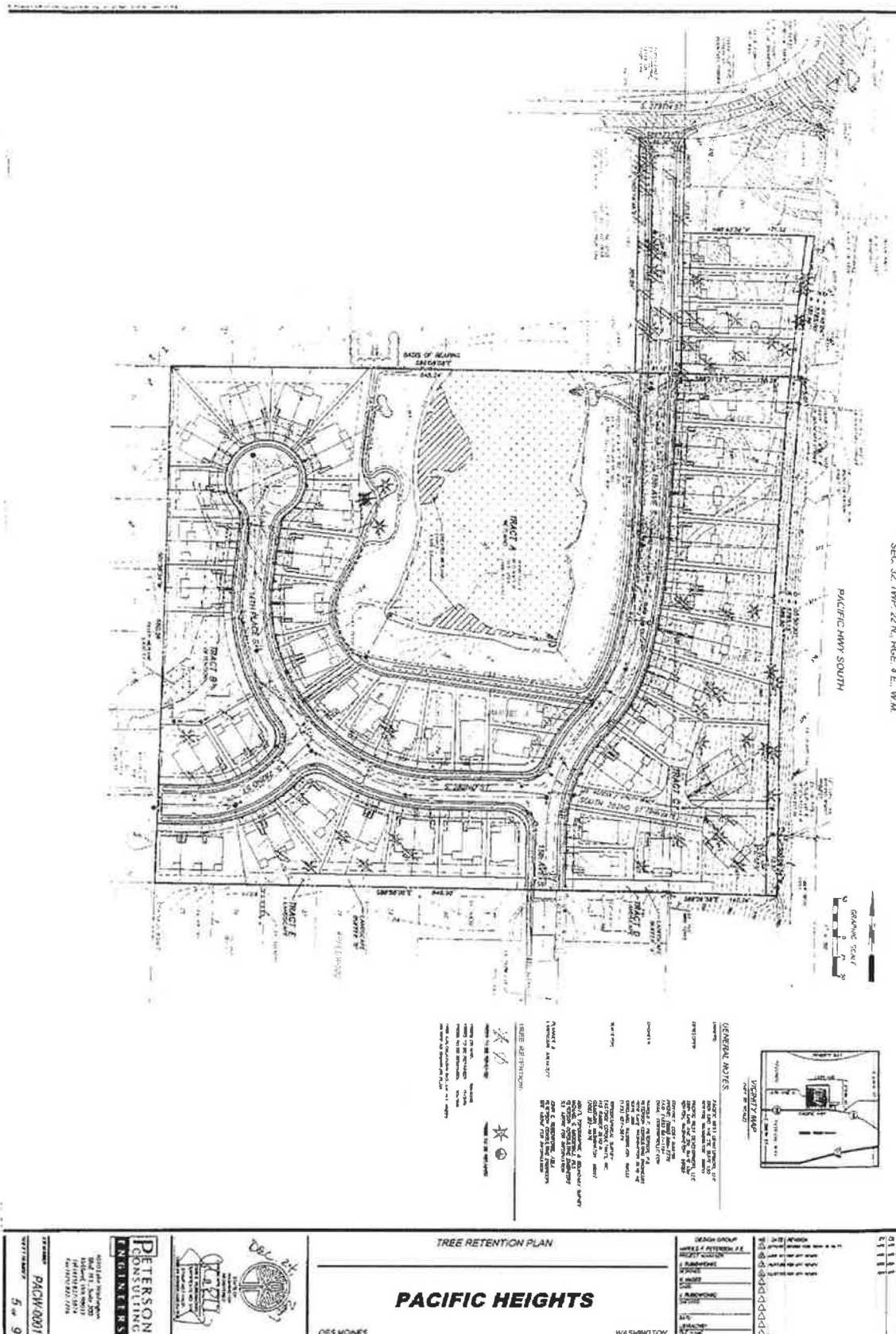
PACIFIC HWY SOUTH











[illegible]

PLANNING NOTES

1. Donor's estate plan shall be based on a ruling so that the planning may be based upon the ruling in *Smith* and not superseded by the ruling in *Adams*.
2. Valuation of the gift shall include the value of the life of the donor's child, which shall include the value of the child's life and the value of the child's estate.
3. The gift shall be based on the value of the child's life and the value of the child's estate, and the value of the child's estate shall be based on the value of the child's life and the value of the child's estate.



PETERSON CONSULTING
Environmental

10000 15th Avenue
Oakland, CA 94612
Tel: (415) 771-7110

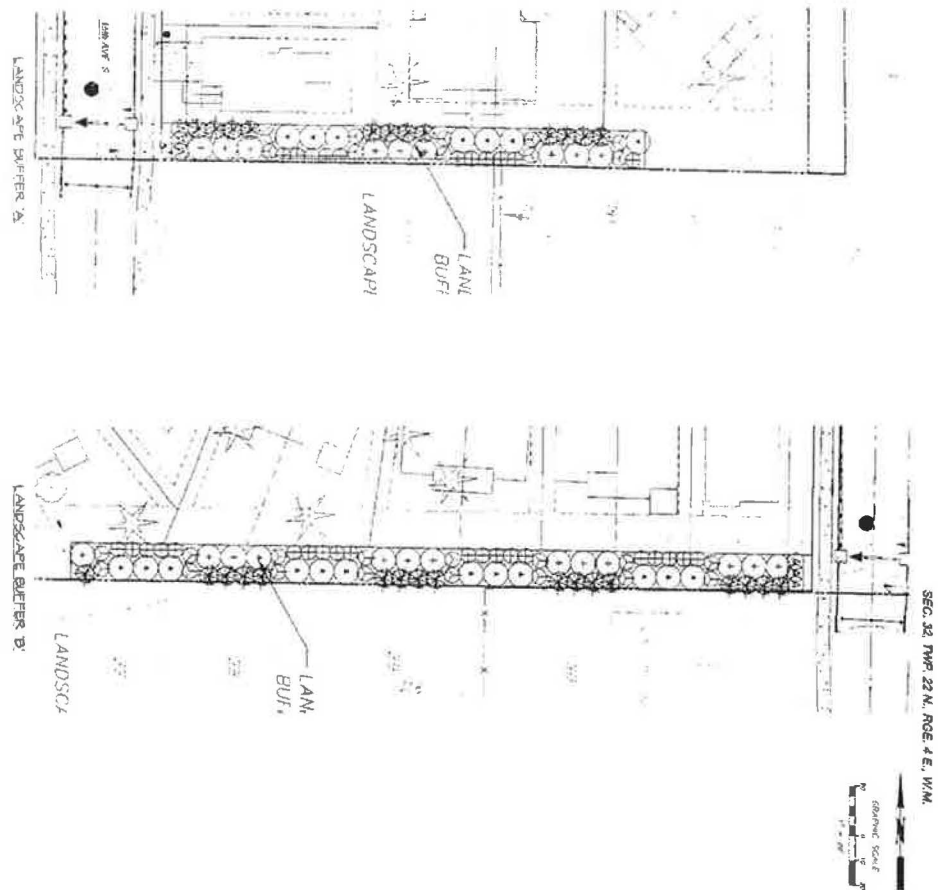
WETLANDS BUFFER
PLANTING PLAN

PACIFIC HEIGHTS

DESIGNER

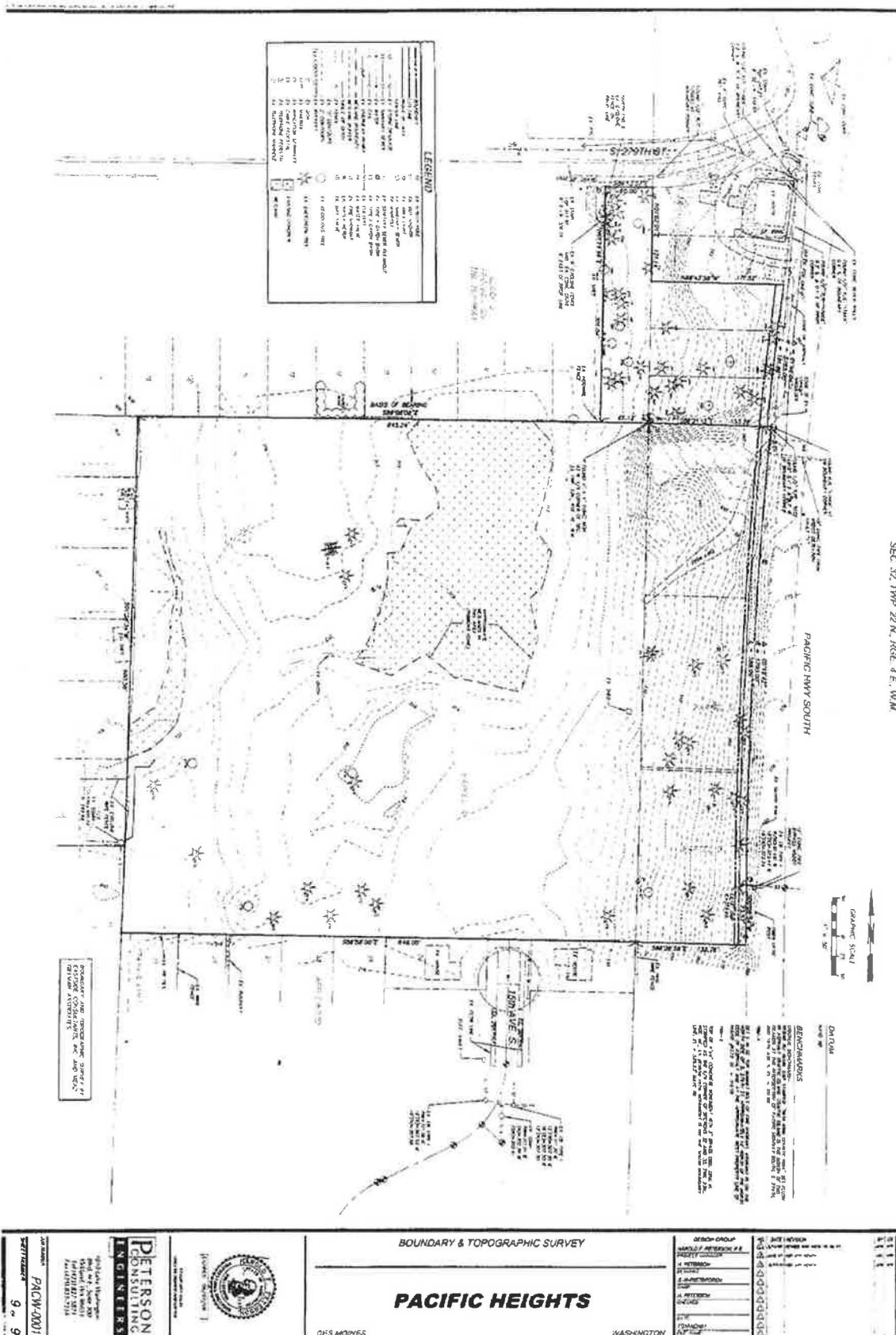
DESIGNER

10000 15th Avenue
Oakland, CA 94612
Tel: (415) 771-7110



LANDSCAPE BUFFER PLANTING SCHEDULE					
SYMBOL, BOTANICAL NAME AND COMMON NAME		SIZE	QUANTITY	SPACING	
	PERUVIAN HONEYEATER	DOUBLE FILE	4'-5'	22	AS SHOWN
	WILLOW NUTCRACK	N. WIND CORNER	4'-5'	11	AS SHOWN
	ANENIA ORANGE-ORANGE	SHEDDER ANENIA	5'-6"	4	AS SHOWN
	WINTER BURNING	WINTERBURN	9'-10"	24	AS SHOWN
	SHRUB SANDWICH	RED FLOWERS	9'-10"	20	AS SHOWN
	WINTER WIND	WINTER BURNING	9'-10"	21	AS SHOWN

[illegible]



CITY OF DES MOINES, WA • PLANNING, BUILDING, AND PUBLIC WORKS

21630 11th Avenue South, Suite D, Des Moines, WA, 98198, (206) 870-7576, www.desmoineswa.gov



MINOR DEVIATION DETERMINATION

Project File No: LUA 2012-0001
Project Name: Pacific Heights Deviation
Applicant: Patrick Harron and Associates
Staff Contact: Nikole Coleman, AICP, Land Use Planner II
 Phone: 206-870-6551
 Email Address: ncoleman@desmoineswa.gov
Determination: Approved pursuant to the conditions of approval listed below
Date of Decision: August 26, 2015

REQUEST

The Applicant requests a minor deviation from the previously approved preliminary plat pursuant to Des Moines Municipal Code 17.10.200.

APPLICABILITY

DMMC 17.10.200(3), Deviations from the Preliminary Plat. The City shall not authorize improvements to be constructed, unless the improvements are consistent with the plat concept and layout of the preliminary subdivision approved by the City Council. In making such a determination, the Planning, Building and Public Works Director and planning official shall utilize the criteria for minor deviations set forth in DMMC 17.10.240(2). If consistency with the criteria is not clear, the Planning, Building and Public Works Director or planning official shall request a determination from the City Council.

DECISIONAL CRITERIA

DMMC 17.10.240(2), Minor Deviations.

The City Council may approve a final plat that is different from the preliminary subdivision if any change:

- a. Is necessary because information provided in the survey for final plat was not available and reasonably could not have been provided during consideration of the preliminary subdivision; and
- b. Does not increase the number of lots; and
- c. Complies with the provisions of Chapter 17.35 DMMC; and
- d. Does not substantially change the location or nature of any improvements or any other element of the subdivision; and
- e. In no way significantly alters the subdivision.

Final plats with changes that do not meet the criteria for minor deviations shall be processed as new preliminary subdivisions and shall require a new application fee.

FINDINGS OF FACT

1. Pacific Heights Preliminary Planned Unit Development (PUD) was submitted to the City in June 2006 (LUA2006-037).
2. Pacific Heights Preliminary PUD was approved by the City Council in March 2008.
3. Pacific Heights PUD was approved as a 12.96 acre project with 77 lots; a mixture of 15 single-family lots and 62 duplex lots.
4. Application for civil review was submitted January 2012 (LUA2012-0001).
5. An application for a minor deviation from the approved preliminary PUD was submitted on July 16, 2015.
6. The Applicant requests to deviate from the previously approved lot configuration of 77 lots to 62 single-family only lots.
7. The review provided herein does **not** constitute full review for compliance with all applicable development requirements by Federal, State and local agencies and departments.

ANALYSIS

1. The requested deviation decreases the number of lots, which also decreases the number of PM trips per day and impacts to the surrounding neighborhood.
2. The deviation requires moving of lot lines only; it does not require any changes to the already approved street layout.
3. The deviation will not have an impact on the critical areas.

CONDITIONS OF APPROVAL

1. A new civil plan set shall be submitted as part of the grading permit review.
2. An amended Technical Information Report (TIR) shall be provided as part of the grading permit review for civil improvements.
3. The TIR and civil plans need to be amended to address Administrative Order Mitigation Condition C-5 to ensure that adequate conveyance is provided for the waters of the state from the northwest corner of the site to the southwest corner of the site to protect the adjoining properties from flooding. This has the potential to impact the configuration of the new proposed lots 37-49.
4. Should a term, provision, condition or other portion of the Agreement be held to be inoperative, invalid, or void, the same shall not affect any other term, provision, condition or other portion of this Agreement; and the remainder of this Agreement shall be effective as if such term, provision, condition or portion had not been contained herein.
5. An administrative decision may be appealed to the Hearing Examiner pursuant to DMMC 18.20.150 and 18.20.160 and chapter 18.240 DMMC.

APPROVAL**Code Official:**

Daniel J. Brewer, P.E., P.T.O.E.

Position/Title:

Planning, Building, and Public Works Director

21630 11th Avenue South, Suite D
Des Moines, WA 98198

8/26/15

(Date)


(Signature)

THIS PAGE LEFT INTENTIONALLY BLANK



MINOR DEVIATION DETERMINATION

Project File No: LUA 2012-0001

Project Name: Pacific Heights Planned Unit Development Subdivision

Applicant: Kathrine Orni
D.R. Horton
11241 Slater Avenue NE, Suite 200
Kirkland, WA 98033

Staff Contact: Denise E. Lathrop, AICP, Planning & Development Services Manager
Phone: 206-870-6563
Email Address: dlathrop@desmoineswa.gov

Determination: Approved pursuant to the conditions of approval listed below

Date of Decision: March 6, 2018

REQUEST

The Applicant requests a minor deviation from the previously approved preliminary plat pursuant to Des Moines Municipal Code 17.10.200(3). The request for Minor Deviation includes a project narrative describing the proposed deviations and why the applicant believes the proposed deviations meet the criteria stipulated in DMMC 17.10.240(2).

The applicant states that the deviations are intended to improve the engineering design of the development and to meet the housing product type of the current developer, while still retaining the fundamental components of the PUD as summarized below:

Planning Changes:

- All lots except 55-58 have been revised to meet DR Horton standards for lot geometry.
- The entrances to Tract C and Tract F and the driveway for lot 7205400155 have been shifted.
- The storm easement between lots 27 and 28 and lots 33 and 34 and the water easement on east side of Tract C have shifted.

Engineering Changes:

- Raised profile and pad grades approximately 1 foot to reduce cut.
- Revised drainage discrepancy for pipe run between CBs 51-53.
- Removed catch basin 17A, not necessary.
- Raised rims on drainage/sewer structures based on revised profile.
- Shifted dispersion trench 2 near lot 23 to avoid trees and wetland.
- Added manholes (10a and 10b) in Tract C to accommodate revised alignment.
- Revised drainage, sewer, and water near entrance of Tract C to accommodate shift.
- Revised water and sewer services to reflect latest changes in lot configuration.
- Revised wall at east end of Tract C to be soldier pile wall.

- Revised wall grades for walls behind lots 1-10 and 59 to 62 to reflect pad grade revisions.
- Regraded lots and walls within limits of Tract C to reflect latest lot configuration.
- Added gravity wall near parcel 7205400155 (north end of 15th).
- Relocated water main near Sta 13+00 due to separation discrepancy.
- Walls near northwest portion of property shifted 1 foot off of property for constructability.
- Revised driveway and grading for parcel 7205400155.
- Increased size of CB13 due to new pipe angle from Tract C.

APPLICABILITY

DMMC 17.10.200(3), Deviations from the Preliminary Plat. The City shall not authorize improvements to be constructed, unless the improvements are consistent with the plat concept and layout of the preliminary subdivision approved by the City Council. In making such a determination, the Planning, Building and Public Works Director and planning official shall utilize the criteria for minor deviations set forth in DMMC 17.10.240(2). If consistency with the criteria is not clear, the Planning, Building and Public Works Director or planning official shall request a determination from the City Council.

DECISIONAL CRITERIA

DMMC 17.10.240(2), Minor Deviations.

The City Council may approve a final plat that is different from the preliminary subdivision if any change:

- a. Is necessary because information provided in the survey for final plat was not available and reasonably could not have been provided during consideration of the preliminary subdivision; and
- b. Does not increase the number of lots; and
- c. Complies with the provisions of Chapter 17.35 DMMC; and
- d. Does not substantially change the location or nature of any improvements or any other element of the subdivision; and
- e. In no way significantly alters the subdivision.

Final plats with changes that do not meet the criteria for minor deviations shall be processed as new preliminary subdivisions and shall require a new application fee.

FINDINGS OF FACT

1. The application for the Pacific Heights Planned Unit Development (PUD) subdivision was deemed complete on December 4, 2006 (LUA06-037).
2. Preliminary plat approval was granted on March 27, 2008.
3. Pacific Heights was preliminary approved as PUD subdivision that included 77 single-family lots on a 12.98 acre site.
4. An application for a minor deviation from the approved preliminary PUD was submitted on September 29, 2017 with subsequent revisions submitted on January 2, 2018.
5. The Applicant requests the following deviations:
 - a. All lots except 55-58 have been revised to meet DR Horton standards for lot geometry.
 - b. The entrance to Tract C has been shifted north by about 17 feet and an angle point has been added.
 - c. The storm easements between lots 27 and 28 has shifted
 - d. The entrance to Tract F has been shifted south east by about 4 feet

- e. The driveway for lot 7205400155 has been south by about 210 feet
 - f. Storm easement between lots 33 and 34 shifted north 4 feet
 - g. Water easement on east side of Tract C shifted east 7 feet
 - h. Raised profile and pad grades approximately 1 foot to reduce cut.
 - i. Revised drainage discrepancy for pipe run between CBs 51-53.
 - j. Removed catch basin 17A, not necessary.
 - k. Raised rims on drainage/sewer structures based on revised profile.
 - l. Shifted dispersion trench 2 near lot 23 about 15 feet south to avoid trees and wetland.
 - m. Added manholes (10a and 10b) in Tract C to accommodate revised alignment.
 - n. Revised drainage, sewer, and water near entrance of Tract C to accommodate shift.
 - o. Revised water and sewer services to reflect latest changes in lot configuration.
 - p. Revised wall at east end of Tract C to be soldier pile wall.
 - q. Revised wall grades for walls behind lots 1-10 and 59 to 62 to reflect pad grade revisions.
 - r. Regraded lots and walls within limits of Tract C to reflect latest lot configuration.
 - s. Added gravity wall near parcel 7205400155 (north end of 15th).
 - t. Relocated water main near Sta 13+00 due to separation discrepancy.
 - u. Walls near northwest portion of property shifted 1 foot off of property for constructability.
 - v. Revised driveway and grading for parcel 7205400155.
 - w. Increased size of CB13 due to new pipe angle from Tract C.
6. The review provided herein does **not** constitute full review for compliance with all applicable development requirements by Federal, State and local agencies and departments.

ANALYSIS

- 1. The information associated with the minor deviation request was not available and reasonably could not have been provided during consideration of the preliminary subdivision.
- 2. The requested deviations do not increase the number of lots.
- 3. The requested deviations require moving of lot lines and minor adjustments to utilities, easements, driveways, walls and grades and does not require significant changes to the approved street layout.
- 4. The requested deviations do not significantly alter the subdivision.

CONDITIONS OF APPROVAL

- 1. Approved deviations shall be reflected in the as-builts and on the final plat.
- 2. A 'No Parking' sign shall be installed at the S. 282nd Street hammerhead turn around to maintain fire truck access.
- 3. A deferred submittal of a driveway plan will be required. Sidewalks must conform to ADA standards while providing a driveway approach not to exceed 8.3%.
- 4. Lots 11,12,13,14 and 15 will require an NFPA 13D fire sprinkler systems.
- 5. Should a term, provision, condition or other portion of the Agreement be held to be inoperative, invalid, or void, the same shall not affect any other term, provision, condition or other portion of this Agreement; and the remainder of this Agreement shall be effective as if such term, provision, condition or portion had not been contained herein.
- 6. An administrative decision may be appealed to the Hearing Examiner pursuant to DMMC 18.20.150 and 18.20.160 and chapter 18.240 DMMC.

APPROVAL**Code Official:**

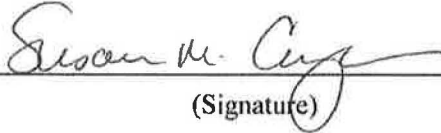
Susan Cezar, LEG

Position/Title:

Community Development Director

21630 11th Avenue South, Suite D
Des Moines, WA 981983/6/2018

(Date)



(Signature)

Code Official:

Brandon Carver, P.E.

Position/Title:

Public Works Director

21650 11th Avenue South
Des Moines, WA 981983/6/2018

(Date)



(Signature)

PACIFIC HEIGHTS

VOL/PG

PLANNED UNIT DEVELOPMENT
A PORTION OF THE NE 1/4 OF THE SE 1/4 AND OF THE SE 1/4 OF THE NE 1/4, SECTION 32, AND THE SW 1/4 OF THE NW 1/4 AND OF THE NW 1/4 OF THE SW 1/4, SECTION 33 ALL IN TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., CITY OF DES MOINES AND CITY OF FEDERAL WAY, KING COUNTY, WASHINGTON

DECLARANT DECLARATION

THE UNDERSIGNED OWNER OR OWNERS OF THE INTEREST IN THE REAL ESTATE DESCRIBED HEREIN HEREBY DECLARE THIS MAP AND DEDICATE THE SAME FOR A COMMON INTEREST COMMUNITY NAMED PACIFIC HEIGHTS, A PLAT, AS THAT TERM IS DEFINED IN THE WASHINGTON UNIFORM COMMON INTEREST OWNERSHIP ACT, SOLELY TO MEET THE REQUIREMENTS OF THE WASHINGTON UNIFORM COMMON INTEREST OWNERSHIP ACT AND NOT FOR ANY PUBLIC PURPOSE. THIS MAP AND ANY PORTION THEREOF IS RESTRICTED BY LAW AND THE DECLARATION FOR PACIFIC HEIGHTS, RECORDED UNDER KING COUNTY.

KNOW ALL PEOPLE BY THESE PRESENTS THAT WE, THE UNDERSIGNED OWNERS OF INTEREST IN THE LAND HEREBY SUBDIVIDED, HEREBY DECLARE THIS PLAT TO BE THE GRAPHIC REPRESENTATION OF THE SUBDIVISION OF SAID LAND, AND DO HEREBY DEDICATE TO THE CITY OF DES MOINES AND THE CITY OF FEDERAL WAY, FOR PERMANENT USE ALL STREETS, AVENUES AND ALLEYS NOT SHOWN AS PRIVATE HEREON AND DEDICATE THE USE THEREOF FOR ALL PUBLIC PURPOSES NOT INCONSISTENT WITH THE USE THEREOF FOR PUBLIC STREET PURPOSES, AND ALSO THE RIGHT TO MAKE ALL NECESSARY SLOPES FOR CUTS AND FILLS UPON THE LOTS SHOWN THEREON IN THE ORIGINAL REASONABLE GRADING OF SAID STREETS AND AVENUES, AND FURTHER DEDICATE OR GRANT TO THE CITY OF DES MOINES THE USE OF ALL PUBLIC EASEMENTS SHOWN ON THIS PLAT FOR ALL PUBLIC PURPOSES AS INDICATED THEREON, INCLUDED BUT NOT LIMITED TO UTILITIES, ROADS AND DRAINAGE UNLESS SUCH EASEMENTS OR ARE SPECIFICALLY IDENTIFIED ON THIS PLAT AS BEING DEDICATED OR CONVEYED TO A PERSON OR ENTITY OTHER THAN THE PUBLIC, IN WHICH CASE WE DO HEREBY DEDICATE SUCH STREETS, EASEMENTS, OR TRACTS TO THE PERSON OR ENTITY IDENTIFIED AND FOR THE PURPOSE STATED.

FURTHER, THE UNDERSIGNED OWNERS OF THE LAND HEREBY SUBDIVIDED, WAIVE FOR THEMSELVES, THEIR HEIRS AND ASSIGNS AND ANY PERSON OR ENTITY DERIVING TITLE FROM THE UNDERSIGNED, ANY AND ALL CLAIMS FOR DAMAGES AGAINST THE CITY OF DES MOINES AND THE CITY OF FEDERAL WAY, ITS SUCCESSORS AND ASSIGNS WHICH MAY BE OCCASIONED BY THE ESTABLISHMENT, CONSTRUCTION, OR MAINTENANCE OF ROADS AND/OR DRAINAGE SYSTEMS WITHIN THIS SUBDIVISION OTHER THAN CLAIMS RESULTING FROM NEGLIGENCE BY THE CITY OF DES MOINES OR THE CITY OF FEDERAL WAY.

FURTHER, THE UNDERSIGNED OWNERS OF THE LAND HEREBY SUBDIVIDED, AGREE FOR THEMSELVES, THEIR HEIRS AND ASSIGNS TO INDEMNIFY AND HOLD THE CITY OF DES MOINES AND THE CITY OF FEDERAL WAY, ITS SUCCESSORS AND ASSIGNS, HARMLESS FROM ANY DAMAGE, INCLUDING ANY COSTS OF DEFENSE, CLAIMED BY PERSONS WITHIN OR WITHOUT THIS SUBDIVISION TO HAVE BEEN CAUSED BY ALTERATIONS OF THE GROUND SURFACE, VEGETATION, DRAINAGE, OR THE ESTABLISHMENT, CONSTRUCTION OR MAINTENANCE OF THE ROADS WITHIN THIS SUBDIVISION, PROVIDED, THIS WAIVER AND INDEMNIFICATION SHALL NOT BE CONSTRUED AS RELEASING THE CITY OF DES MOINES AND THE CITY OF FEDERAL WAY, ITS SUCCESSORS OR ASSIGNS, FROM LIABILITY FOR DAMAGES, INCLUDING THE COST OF DEFENSE, RESULTING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY OF DES MOINES AND THE CITY OF FEDERAL WAY, ITS SUCCESSORS OR ASSIGNS.

THIS SUBDIVISION, DEDICATION, WAIVER OF CLAIMS AND AGREEMENT TO HOLD HARMLESS IS MADE WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF SAID OWNERS.

IN WITNESS WHEREOF WE SET OUR HANDS AND SEALS.

SSHI LLC, A DELAWARE LIMITED LIABILITY COMPANY, DBA D.R. HORTON

BY: SHLR WASHINGTON, INC, A WASHINGTON CORPORATION
ITS: MANAGER

BY: KEVIN CAPUZZI
ITS: SEATTLE DIVISION PRESIDENT

ACKNOWLEDGMENT

STATE OF WASHINGTON }
COUNTY OF }SS

I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT KEVIN CAPUZZI IS THE PERSON WHO APPEARED BEFORE ME, AND SAID PERSON ACKNOWLEDGED THAT HE, ON OATH STATED THAT HE WAS AUTHORIZED TO EXECUTE THE INSTRUMENT AND ACKNOWLEDGED IT AS THE SEATTLE DIVISION PRESIDENT OF SSHI, LLC, A DELAWARE LIMITED LIABILITY COMPANY TO BE THE FREE AND VOLUNTARY ACT OF SUCH PARTY FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.

SIGNATURE OF NOTARY PUBLIC
PRINTED NAME
DATE
MY APPOINTMENT EXPIRES

LEGAL DESCRIPTION

(PER FIRST AMERICAN TITLE INSURANCE COMPANY, SUBDIVISION GUARANTEE NO. 3037746, DATED OCTOBER 24, 2016)

PARCEL A:
THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON.

PARCEL B:
THAT PORTION OF THE NORTH 219.70 FEET OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING WEST OF STATE HIGHWAY;

EXCEPT THAT PORTION LYING EASTERLY OF A LINE DRAWN PARALLEL WITH AND 60 FEET WESTERLY OF THE SR 99 LINE SURVEY OF SR 99, S. 283RD ST. VIC. TO S. 272ND ST. VIC;

EXCEPT THAT PORTION CONVEYED TO THE STATE OF WASHINGTON BY DEED RECORDED DECEMBER 05, 2005 UNDER RECORDING NO. 20051205003101, IN KING COUNTY, WASHINGTON.

PARCEL C:
THAT PORTION OF THE SOUTH 219.70 FEET OF THE NORTH 439.40 FEET OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING WESTERLY OF STATE ROAD NO. 1 (PACIFIC HIGHWAY SOUTH);

EXCEPT THAT PORTION LYING EASTERLY OF A LINE DRAWN PARALLEL WITH AND 60 FEET WESTERLY OF THE SR 99 LINE SURVEY OF SR 99, S. 283RD ST. VIC. TO S. 272ND ST. VIC;

EXCEPT THAT PORTION CONVEYED TO THE STATE OF WASHINGTON BY DEED RECORDED DECEMBER 05, 2005 UNDER RECORDING NO. 20051205003101, IN KING COUNTY, WASHINGTON.

PARCEL D:
THE SOUTH 219.74 FEET OF THE NORTH HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER LYING WEST OF THE STATE ROAD, SECTION 33, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON;

EXCEPT THAT PORTION LYING EASTERLY OF A LINE DRAWN PARALLEL WITH AND 60 FEET WESTERLY OF THE SR 99 LINE SURVEY OF SR 99, S. 283RD ST. VIC. TO S. 272ND ST. VIC;

EXCEPT THAT PORTION CONVEYED TO THE STATE OF WASHINGTON BY DEED RECORDED DECEMBER 05, 2005 UNDER RECORDING NO. 20051205003101, IN KING COUNTY, WASHINGTON.

PARCEL E

LOTS 3, 4, AND 5, BLOCK 2, REDONDO ON THE HIGHWAY ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 30 OF PLATS, PAGE 39, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPT THAT PORTION CONVEYED TO THE STATE OF WASHINGTON BY DEED RECORDED UNDER KING COUNTY RECORDING NO. 20051230003188.

PARCEL F

LOT 6, BLOCK 2, REDONDO ON THE HIGHWAY ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 30 OF PLATS, PAGE 39, RECORDS OF KING COUNTY, WASHINGTON.

SHEET INDEX

SHEET 1	DEDICATION, ACKNOWLEDGEMENTS, APPROVALS, LEGAL DESCRIPTIONS, CERTIFICATES
SHEET 2	GENERAL NOTES, EASEMENT PROVISIONS
SHEET 3	SECTION/BOUNDARY
SHEET 4	MAP
SHEET 5	MAP
SHEET 6	MAP
SHEET 7	MAP
SHEET 8	EASEMENTS

CITY OF DES MOINES
LUA2012-0001

OWNERS INFORMATION

SSHI, LLC, A DELAWARE LIMITED LIABILITY COMPANY,
dba D.R. HORTON
11241 TOTEM LAKE BLVD, NE, SUITE 220
KIRKLAND, WA 98034

APPROVALS FOR CITY OF DES MOINES

PUBLIC WORKS

ALL REQUIRED SEWAGE DISPOSAL, WATER SUPPLY AND OTHER PUBLIC IMPROVEMENTS HAVE BEEN INSTALLED, INSPECTED AND ACCEPTED, OR PERFORMANCE SECURITY HAS BEEN DEPOSITED WITH THE CITY OF DES MOINES.

THIS ____ DAY OF _____, 20____

PUBLIC WORKS DIRECTOR

PLANNING AND BUILDING

REVIEWED AND APPROVED BY THE DIRECTOR OF COMMUNITY DEVELOPMENT AND HEREBY CERTIFIED FOR FILING.

THIS ____ DAY OF _____, 20____

COMMUNITY DEVELOPMENT DIRECTOR

KING COUNTY DEPARTMENT OF ASSESSMENTS

EXAMINED AND APPROVED THIS ____ DAY OF _____, 20____

KING COUNTY ASSESSOR

DEPUTY KING COUNTY ASSESSOR

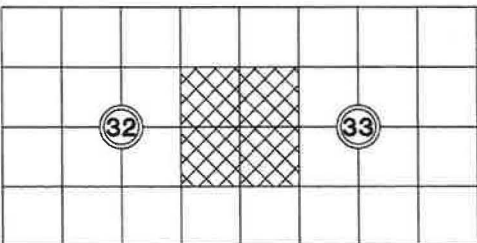
ACCOUNT NUMBER

FINANCE DIVISION CERTIFICATE

I HEREBY CERTIFY THAT ALL PROPERTY TAXES ARE PAID, THAT THERE ARE NO DELINQUENT SPECIAL ASSESSMENTS CERTIFIED TO THIS OFFICE FOR COLLECTION AND THAT ALL SPECIAL ASSESSMENTS CERTIFIED TO THIS OFFICE FOR COLLECTION ON ANY OF THE PROPERTY HEREIN CONTAINED, DEDICATED AS STREETS, ALLEYS OR FOR ANY OTHER PUBLIC USE, ARE PAID IN FULL THIS ____ DAY OF _____, 20____

MANAGER, FINANCE DIVISION

DEPUTY



INDEX: THE NE 1/4 OF THE SE 1/4 AND OF THE SE 1/4 OF THE NE 1/4, SECTION 32, AND THE SW 1/4 OF THE NW 1/4 AND OF THE NW 1/4 OF THE SW 1/4, SECTION 33 ALL IN TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M.



RECORDING CERTIFICATE

FILED FOR RECORD AT THE REQUEST OF THE KING COUNTY COUNCIL THIS ____ DAY OF _____, 2019, AT ____ MINUTES PAST ____ M. AND RECORDED IN VOLUME ____ OF PLATS, PAGE(S) _____, RECORDS OF KING COUNTY, WASHINGTON.
DIVISION OF RECORDS AND ELECTIONS

MANAGER

SUPERINTENDENT OF RECORDS

SURVEYOR'S CERTIFICATE

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT AT THE REQUEST OF DR HORTON ON FEBRUARY 5, 2019. I HEREBY CERTIFY THAT THIS MAP FOR PACIFIC HEIGHTS IS BASED UPON AN ACTUAL SURVEY OF THE PROPERTY HEREIN DESCRIBED; THAT THE BEARINGS AND DISTANCES ARE CORRECTLY SHOWN; THAT ALL INFORMATION REQUIRED BY THE WASHINGTON UNIFORM COMMON INTEREST OWNERSHIP ACT IS SUPPLIED HEREIN; AND THAT ALL HORIZONTAL BOUNDARIES OF THE UNITS, (1) TO THE EXTENT DETERMINED BY THE WALLS, FLOORS, OR CEILINGS THEREOF, OR OTHER PHYSICAL MONUMENTS, ARE SUBSTANTIALLY COMPLETED IN ACCORDANCE WITH SAID MAP; OR (2) TO THE EXTENT SUCH BOUNDARIES ARE NOT DEFINED BY PHYSICAL MONUMENTS, SUCH BOUNDARIES ARE SHOWN ON THE MAP.

SETH D. O'HARE, PLS
CERTIFICATE NO. 38985

5-17-2019



C.E.S. NW INC.
CIVIL ENGINEERING & SURVEYING

429 29TH ST. NE, SUITE D BUS: (253) 848-4282
PUYALLUP, WA 98372

JOB 16117

SHEET 1 OF 8

PACIFIC HEIGHTS

PLANNED UNIT DEVELOPMENT

A PORTION OF THE NE 1/4 OF THE SE 1/4 AND OF THE SE 1/4 OF THE NE 1/4, SECTION 32, AND THE SW 1/4 OF THE NW 1/4 AND OF THE NW 1/4 OF THE SW 1/4, SECTION 33 ALL IN TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., CITY OF DES MOINES AND CITY OF FEDERAL WAY, KING COUNTY, WASHINGTON

VOL / PG

TRACT NOTES

TRACT 'A' IS A WETLAND AND WETLAND BUFFER TRACT. THE TRACT WILL BE DEEDED TO THE CITY OF DES MOINES UNDER SEPARATE INSTRUMENT. THE CITY OF DES MOINES SHALL BE RESPONSIBLE FOR THE MAINTENANCE, REPAIR AND REPLACEMENT OF THE IMPROVEMENTS CONTAINED THEREIN.

TRACT 'B' IS A PUBLIC STORM DRAIN TRACT. THE TRACT WILL BE DEEDED TO THE CITY OF DES MOINES UNDER SEPARATE INSTRUMENT. THE CITY OF DES MOINES SHALL BE RESPONSIBLE FOR THE MAINTENANCE, REPAIR AND REPLACEMENT OF THE IMPROVEMENTS CONTAINED THEREIN.

TRACT 'C' IS A PRIVATE ACCESS TRACT FOR INGRESS, EGRESS, PRIVATE DRAINAGE, PRIVATE SEWER, PRIVATE WATER, AND UTILITIES FOR THE BENEFIT OF THE PUBLIC AND THE OWNERS OF LOTS 11, 12, 13, 14, AND 15. OWNERSHIP OF LOTS 11, 12, 13, 14, AND 15 WITHIN THIS PLAT INCLUDES AN EQUAL AND UNDIVIDED OWNERSHIP IN SAID TRACT, AND AN EQUAL AND UNDIVIDED RESPONSIBILITY FOR THE MAINTENANCE OF SAID TRACT. AN EASEMENT IS HEREBY RESERVED FOR AND GRANTED TO LAKEHAVEN WATER AND SEWER DISTRICT, THE CITY OF FEDERAL WAY FOR HIGHWAY 99 DRAINAGE CONVEYANCE, AND THEIR SUCCESSORS AND ASSIGNS OVER, UNDER, AND UPON SAID TRACT TO INSTALL, LAY, CONSTRUCT, RENEW, MAINTAIN, AND OPERATE FACILITIES AND PIPELINES WITH THE RIGHT TO ENTER UPON THE EASEMENT AT ALL TIMES FOR THE PURPOSES STATED. ALL CONVEYANCES OF LOTS 11, 12, 13, 14, AND 15 MUST INCLUDE THEIR FRACTIONAL JOINT OWNERSHIP INTEREST IN TRACT 'C'.

TRACTS 'D' AND 'E' ARE LANDSCAPE BUFFER TRACTS. EACH OWNERSHIP OF LOTS 1 THROUGH 62 IN THIS PLAT INCLUDES AN EQUAL AND UNDIVIDED OWNERSHIP IN TRACTS 'D' AND 'E'. THE PACIFIC HEIGHTS HOMEOWNER'S ASSOCIATION SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF TRACTS 'D' AND 'E'. HOWEVER, SHOULD THE HOMEOWNER'S ASSOCIATION FAIL TO PROPERLY MAINTAIN TRACTS 'D' AND 'E', THEN THE LOT OWNER OF ALL THE LOTS 1 THROUGH 62 SHALL BE EQUALLY RESPONSIBLE FOR THE MAINTENANCE OF SAID TRACTS.

TRACT 'F' IS A PRIVATE ACCESS TRACT FOR INGRESS, EGRESS, PRIVATE DRAINAGE, PRIVATE SEWER, PRIVATE WATER, AND UTILITIES FOR THE BENEFIT OF THE OWNERS OF LOTS 49, 50, AND 51. OWNERSHIP OF LOTS 49, 50, AND 51 WITHIN THIS PLAT INCLUDES AN EQUAL AND UNDIVIDED OWNERSHIP IN SAID TRACT, AND AN EQUAL AND UNDIVIDED RESPONSIBILITY FOR THE MAINTENANCE OF SAID TRACT. AN EASEMENT IS HEREBY RESERVED FOR AND GRANTED TO LAKEHAVEN WATER AND SEWER DISTRICT AND THE CITY OF DES MOINES, AND THEIR SUCCESSORS AND ASSIGNS OVER, UNDER, AND UPON SAID TRACT TO INSTALL, LAY, CONSTRUCT, RENEW, MAINTAIN, AND OPERATE FACILITIES AND PIPELINES WITH THE RIGHT TO ENTER UPON THE EASEMENT AT ALL TIMES FOR THE PURPOSES STATED. ALL CONVEYANCES OF LOTS 49, 50, AND 51 MUST INCLUDE THEIR FRACTIONAL JOINT OWNERSHIP INTEREST IN TRACT 'F'.

UTILITY EASEMENT PROVISION

AN EASEMENT IS HEREBY RESERVED FOR AND GRANTED TO LAKEHAVEN WATER AND SEWER DISTRICT, CITY OF DES MOINES, THE CITY OF FEDERAL WAY, ANY POWER COMPANY, ANY GAS COMPANY, U.S. POSTAL SERVICE, ANY TELEPHONE COMPANY, ANY CABLE TELEVISION COMPANY, ANY CITY, KING COUNTY, ANY OTHER PUBLIC OR PRIVATE UNDERGROUND UTILITY SERVICE (INCLUDING, BUT NOT LIMITED TO, PRIVATE ROOF DRAINS) AND OTHER NECESSARY UTILITIES, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, ACROSS, OVER, UNDER AND UPON THE EXTERIOR 10 FEET, PARALLEL WITH AND ADJOINING THE PUBLIC STREET FRONTAGES OF ALL LOTS HEREON, PARALLEL WITH AND ADJOINING EXISTING OR PROPOSED ACCESS RIGHT OF WAY, AS WELL AS AN EASEMENT WITHIN ALL PRIVATE ROADS, TRACTS AND DRIVES, IF ANY, IN WHICH TO INSTALL, LAY, CONSTRUCT, RENEW, OPERATE AND MAINTAIN UNDERGROUND DISTRIBUTION SYSTEMS WITH NECESSARY FACILITIES AND OTHER EQUIPMENT FOR THE PURPOSE OF SERVING THIS SUBDIVISION, AND OTHER PROPERTY, WITH SANITARY SEWER, STORM DRAINAGE, ELECTRIC, GAS, TELEPHONE, WATER AND OTHER UTILITY SERVICES, TOGETHER WITH THE RIGHT TO ENTER UPON THE LOTS, STREETS, SPACES AND TRACTS AT ALL TIMES FOR THE PURPOSE HEREIN STATED. NO LINES OR WIRES FOR THE TRANSMISSION OF ELECTRIC CURRENT OR TELEPHONE USE, CABLE TELEVISION, FIRE OR POLICE SIGNALS, OR FOR OTHER PURPOSES, SHALL BE PLACED UPON ANY LOT UNLESS THE SAME SHALL BE UNDERGROUND OR IN CONDUIT ATTACHED TO A BUILDING. AFTER COMPLETION OF ANY ALLOWED ACTIVITIES WITHIN THE ABOVE MENTIONED EASEMENT, THE GROUND SURFACE WILL BE RESTORED TO THE CONDITION WHICH EXISTED BEFORE THE ALLOWED ACTIVITY TOOK PLACE.

PUBLIC DRAINAGE EASEMENT AND COVENANT

ALL DRAINAGE EASEMENTS DEPICTED WITHIN THIS PLAT, NOT SHOWN AS "PRIVATE", ARE HEREBY GRANTED AND CONVEYED TO THE CITY OF DES MOINES, THE CITY OF FEDERAL WAY, A POLITICAL SUBDIVISION OF KING COUNTY, STATE OF WASHINGTON, FOR THE PURPOSE OF CONVEYING, STORING, MANAGING AND FACILITATING STORM AND SURFACE WATER PER THE APPROVED ENGINEERING LUA2012-0001 AND THOSE BUILDING PERMIT PLANS TO BE SUBMITTED AND APPROVED FOR EACH LOT BY THE CITY OF DES MOINES, TOGETHER WITH THE RIGHT OF REASONABLE ACCESS (INGRESS AND EGRESS), TO ENTER SAID DRAINAGE EASEMENTS FOR THE PURPOSE OF INSPECTING, OPERATING, MAINTAINING, REPAIRING AND IMPROVING THE DRAINAGE FACILITIES CONTAINED THEREIN. NOTE THAT EXCEPT FOR THE FACILITIES WHICH HAVE BEEN FORMALLY ACCEPTED FOR MAINTENANCE BY KING THE CITY OF DES MOINES AND THE CITY OF FEDERAL WAY, MAINTENANCE OF DRAINAGE FACILITIES ON PRIVATE PROPERTY IS THE RESPONSIBILITY OF THE PROPERTY OWNER.

THE OWNERS OF SAID PRIVATE PROPERTY ARE REQUIRED TO OBTAIN PRIOR WRITTEN APPROVAL FROM THE CITY OF DES MOINES AND THE CITY OF FEDERAL WAY, AND ANY REQUIRED PERMITS FOR ACTIVITIES SUCH AS CLEARING AND GRADING, PRIOR TO FILLING, PIPING, CUTTING OR REMOVING VEGETATION (EXCEPT FOR ROUTINE LANDSCAPE MAINTENANCE SUCH AS LAWN MOWING) IN OPEN VEGETATED DRAINAGE FACILITIES (SUCH AS SWALES, CHANNELS, DITCHES, PONDS, ETC.), OR PERFORMING ANY ALTERATIONS OR MODIFICATIONS TO THE DRAINAGE FACILITIES, CONTAINED WITHIN SAID DRAINAGE EASEMENTS.

THESE EASEMENTS ARE INTENDED TO FACILITATE REASONABLE ACCESS TO THE DRAINAGE FACILITIES. THESE EASEMENTS AND COVENANT SHALL RUN WITH THE LAND AND ARE BINDING UPON THE OWNERS OF SAID PRIVATE PROPERTY, THEIR HEIRS, SUCCESSORS AND ASSIGNS.

PUBLIC DRAINAGE EASEMENT RESTRICTIONS

STRUCTURES, FILL OR OBSTRUCTIONS (INCLUDING BUT NOT LIMITED TO DECKS, PATIOS, OUTBUILDINGS, OR OVERHANGS) SHALL NOT BE PERMITTED BEYOND THE BUILDING SETBACK LINE OR WITHIN PUBLIC DRAINAGE EASEMENTS UNLESS OTHERWISE APPROVED BY THE CITY OF DES MOINES AND THE CITY OF FEDERAL WAY, OR ITS SUCCESSOR AGENCIES. ADDITIONALLY, GRADING AND CONSTRUCTION OF FENCING SHALL NOT BE ALLOWED WITHIN THE PUBLIC DRAINAGE EASEMENTS SHOWN ON THIS PLAT UNLESS OTHERWISE APPROVED BY THE CITY OF DES MOINES, THE CITY OF FEDERAL WAY, OR ITS SUCCESSOR AGENCY.

PRIVATE DRAINAGE EASEMENT AND COVENANT

A PRIVATE DRAINAGE EASEMENT AS DEPICTED HEREIN ACROSS LOTS 1 THROUGH 62 IS GRANTED TO LOTS BENEFITING FROM THE PRIVATE STORM DRAINAGE SYSTEM CONTAINED THEREIN UPON THE RECORDING OF THIS PLAT. THE OWNERS OF PRIVATE PROPERTY WITHIN THIS PLAT ENCUMBERED WITH DRAINAGE EASEMENTS SHOWN AS "PRIVATE", HEREBY GRANT AND CONVEY TO THE CITY OF DES MOINES, THE CITY OF FEDERAL WAY, AND THE PACIFIC HEIGHTS HOMEOWNER'S ASSOCIATION, THE RIGHT, BUT NOT THE OBLIGATION TO CONVEY STORM AND SURFACE WATER PER THE BUILDING PERMIT PLANS TO BE SUBMITTED AND APPROVED FOR EACH LOT BY THE CITY OF DES MOINES, UNLESS OTHERWISE APPROVED BY THE CITY OF DES MOINES, TOGETHER WITH THE RIGHT OF REASONABLE ACCESS (INGRESS AND EGRESS), TO ENTER SAID PRIVATE DRAINAGE EASEMENT FOR THE PURPOSE OF OBSERVING THAT THE LOT OWNERS ARE PROPERLY OPERATING AND MAINTAINING THE DRAINAGE FACILITIES CONTAINED THEREIN.

THE LOT OWNERS BENEFITING FROM THE PRIVATE STORM DRAINAGE SYSTEM ARE RESPONSIBLE FOR OPERATING, MAINTAINING AND REPAIRING THE DRAINAGE FACILITIES CONTAINED WITHIN SAID PRIVATE DRAINAGE EASEMENT, AND ARE HEREBY REQUIRED TO OBTAIN ANY REQUIRED PERMITS FROM THE CITY OF DES MOINES OR THE CITY OF FEDERAL WAY, PRIOR TO FILLING, PIPING, CUTTING OR REMOING VEGETATION (EXCEPT FOR ROUTINE LANDSCAPE MAINTENANCE SUCH AS LAWN MOWING) IN OPEN VEGETATED DRAINAGE FACILITIES (SUCH AS SWALES, CHANNELS, DITCHES, PONDS, ETC.), OR PERFORMING ANY ALTERATIONS OR MODIFICATIONS TO THE DRAINAGE FACILITIES, CONTAINED WITHIN SAID DRAINAGE EASEMENT.

THIS COVENANT SHALL RUN WITH THE LAND AND IS BINDING UPON THE OWNERS OF SAID PRIVATE PROPERTY, THEIR HEIRS, SUCCESSORS AND ASSIGNS.

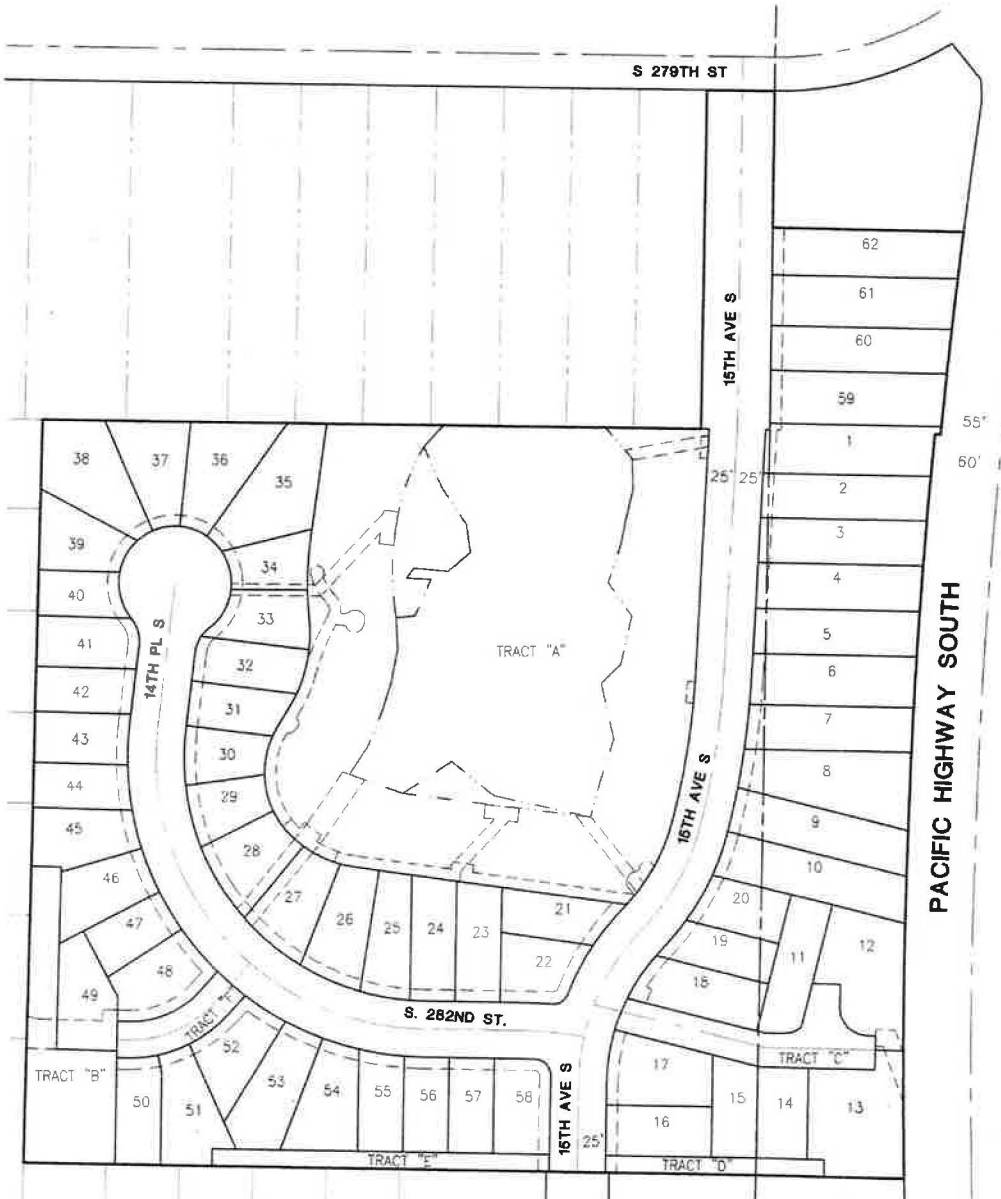
PUBLIC PEDESTRIAN ACCESS EASEMENT

AN EASEMENT IS HEREBY RESERVED FOR AND GRANTED TO THE PUBLIC ACROSS AND UPON THE PEDESTRIAN PATHWAY AS SHOWN ON TRACT 'A' ON SHEETS 5, 7, AND 8 OF THIS PLAT. THE CITY OF DES MOINES SHALL BE RESPONSIBLE FOR THE MAINTENANCE, REPAIR, AND REPLACEMENT OF THE IMPROVEMENTS CONTAINED THEREIN.

NOTES, CONDITIONS, AND RESTRICTIONS

THE PACIFIC HEIGHTS HOMEOWNER'S ASSOCIATION WAS ESTABLISHED ON _____ THE ARTICLES OF INCORPORATION ARE ON FILE WITH THE STATE OF WASHINGTON IN OLYMPIA.

THIS PLAT IS SUBJECT TO COVENANTS, CONDITIONS, AND RESTRICTIONS AS RECORDED UNDER KING COUNTY RECORDING NUMBER _____



SITE LAYOUT MAP

LOT ADDRESS TABLE			
LOT #	ADDRESS	LOT #	ADDRESS
1	28002 15TH AVE S	32	28016 14TH CT S
2	28006 15TH AVE S	33	28012 14TH CT S
3	28010 15TH AVE S	34	28008 14TH CT S
4	28014 15TH AVE S	35	28004 14TH CT S
5	28018 15TH AVE S	36	28000 14TH CT S
6	28022 15TH AVE S	37	28001 14TH CT S
7	28026 15TH AVE S	38	28005 14TH CT S
8	28030 15TH AVE S	39	28009 14TH CT S
9	28034 15TH AVE S	40	28013 14TH CT S
10	28038 15TH AVE S	41	28017 14TH CT S
11	1517 S 281ST PL	42	28021 14TH CT S
12	1521 S 281ST PL	43	28025 14TH CT S
13	1520 S 281ST PL	44	28029 14TH CT S
14	1516 S 281ST PL	45	28033 14TH CT S
15	1512 S 281ST PL	46	28037 14TH CT S
16	28108 15TH AVE S	47	28041 14TH CT S
17	28102 15TH AVE S	48	28045 14TH CT S
18	28050 15TH AVE S	49	1332 S 281ST PL
19	28046 15TH AVE S	50	1335 S 281ST PL
20	28042 15TH AVE S	51	1339 S 281ST PL
21	28045 15TH AVE S	52	1403 S 282ND ST
22	28049 15TH AVE S	53	1407 S 282ND ST
23	1418 S 282ND ST	54	1411 S 282ND ST
24	1414 S 282ND ST	55	1415 S 282ND ST
25	1410 S 282ND ST	56	1419 S 282ND ST
26	1406 S 282ND ST	57	1423 S 282ND ST
27	1402 S 282ND ST	58	1427 S 282ND ST
28	28040 14TH CT S	59	27928 15TH AVE S
29	28032 14TH CT S	60	27924 15TH AVE S
30	28026 14TH CT S	61	27920 15TH AVE S
31	28020 14TH CT S	62	27916 15TH AVE S



C.E.S. NW INC.
CIVIL ENGINEERING & SURVEYING

429 28TH ST. NE, SUITE D BUS: (253) 840-4282
PUYALLUP, WA 98372

JOB 16117

SHEET 2 OF 8

CITY OF DES MOINES
LUA2012-0001

PACIFIC HEIGHTS

vol./pg

PLANNED UNIT DEVELOPMENT
A PORTION OF THE NE 1/4 OF THE SE 1/4 AND OF THE SE 1/4 OF THE NE 1/4, SECTION 32, AND THE
SW 1/4 OF THE NW 1/4 AND OF THE NW 1/4 OF THE SW 1/4, SECTION 33 ALL IN TOWNSHIP 22 NORTH,
RANGE 4 EAST, W.M., CITY OF DES MOINES AND CITY OF FEDERAL WAY, KING COUNTY, WASHINGTON

LAKEHAVEN WATER AND SEWER DISTRICT EASEMENT PROVISIONS

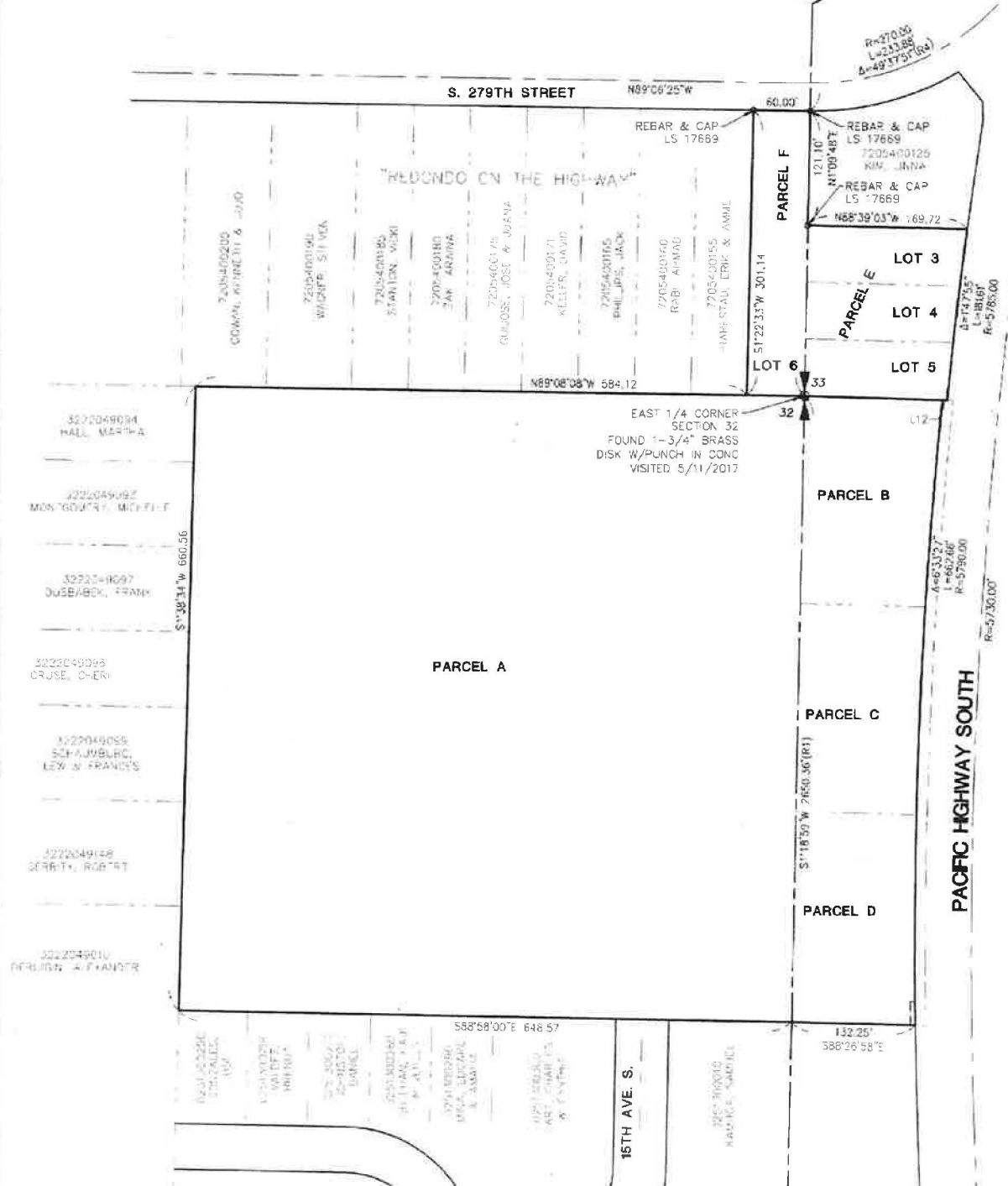
AN EASEMENT IS HEREBY IRREVOCABLY RESERVED FOR AND GRANTED TO LAKEHAVEN WATER AND SEWER DISTRICT AND ITS AGENTS, SUCCESSORS AND ASSIGNS, FOR SO LONG AS IT SHALL OWN AND MAINTAIN THE UTILITIES REFERENCED HEREIN UNDER AND UPON THE AREA SHOWN ON THE PLAT AND DESCRIBED HEREIN AS "WATERLINE EASEMENT" (WLE) AND "SANITARY SEWER EASEMENT" (SSE) TO INSTALL, MAINTAIN, REPLACE, REPAIR AND OPERATE WATER AND SEWER MAINS AND APPURTENANCES FOR THIS SUBDIVISION AND OTHER PROPERTY TOGETHER WITH THE RIGHT TO ENTER UPON SAID EASEMENT AT ALL TIMES FOR PURPOSES INCIDENT THERETO, NO BUILDING, WALL, ROCKERY, FENCE, TREES OR STRUCTURE OF ANY KIND SHALL BE ERECTED OR PLANTED, NOR SHALL ANY FILL MATERIAL BE PLACED WITHIN THE BOUNDARIES OF SAID EASEMENT AREA. NO EXCAVATION SHALL BE MADE WITHIN THREE (3) FEET OF SAID WATER OR SEWER SERVICE FACILITIES AND THE SURFACE LEVEL OF THE GROUND WITHIN THE EASEMENT AREA SHALL BE MAINTAINED AT THE ELEVATION AS CURRENTLY EXISTING. GRANTOR HEREBY AGREES THAT NO WATER AND/OR SEWER SYSTEM FACILITY OR APPURTENANCE OF ANY KIND SHALL BE CONSTRUCTED OR LOCATED BY GRANTOR, OR ANY THIRD PARTY ACTING UNDER AUTHORITY OF GRANTOR, WITHIN OR PROXIMATE TO SAID EASEMENT, UNLESS SUCH INSTALLATION IS APPROVED BY GRANTEE AND IS IN CONFORMANCE WITH THE THEN-CURRENT EDITION OF THE "CRITERIA FOR SEWAGE WORKS DESIGN" PUBLISHED BY THE WASHINGTON STATE DEPARTMENT OF ECOLOGY. GRANTOR HEREBY FURTHER AGREES THAT NO OTHER UTILITY FACILITY OR APPURTENANCE OF ANY KIND, INCLUDING UTILITY SERVICE CONNECTIONS, SHALL BE CONSTRUCTED OR LOCATED BY GRANTOR, OR ANY THIRD PARTY ACTING UNDER AUTHORITY OF GRANTOR, WITHIN THREE FEET (3'), MEASURED HORIZONTALLY FOR PARALLEL ALIGNMENTS, OR WITHIN SIX INCHES (6"), MEASURED VERTICALLY FOR CROSSING OR PERPENDICULAR ALIGNMENTS, OF ANY PORTION OF THE GRANTEE'S FACILITIES. GRANTOR ADDITIONALLY GRANTS TO THE LAKEHAVEN WATER AND SEWER DISTRICT AND ITS AGENTS, SUCCESSORS AND ASSIGNS THE USE OF SUCH ADDITIONAL AREA IMMEDIATELY ADJACENT TO SAID EASEMENT AREA AS SHALL BE REQUIRED FOR THE CONSTRUCTION, RECONSTRUCTION, MAINTENANCE AND OPERATION OF SAID WATER OR SEWER FACILITIES. THE USE OF SUCH ADDITIONAL AREA SHALL BE HELD TO A REASONABLE MINIMUM AND BE RETURNED TO THE CONDITION EXISTING IMMEDIATELY BEFORE THE PROPERTY WAS ENTERED UPON BY THE LAKEHAVEN WATER AND SEWER DISTRICT, ITS AGENTS, SUCCESSORS AND ASSIGNS IN ADDITION TO THE OTHER RESTRICTIONS HEREIN. GRANTOR SHALL NOT CONVEY TO A THIRD PARTY ANY EASEMENT OR OTHER INTEREST OR RIGHT OF USE OF PROPERTY SUBJECT TO THE EASEMENT THAT WOULD IMPAIR OR LIMIT THE USE OF THE EASEMENT RIGHTS GRANTED HEREIN.

TITLE EXCEPTIONS

(PER FIRST AMERICAN TITLE INSURANCE COMPANY, SUBDIVISION GUARANTEE NO. 3037746, DATED OCTOBER 24, 2018)

TITLE EXCEPTIONS

- 1-4 NOT SURVEY RELATED
5. RESERVATIONS AND EXCEPTIONS, INCLUDING THE TERMS AND CONDITIONS THEREOF:
RESERVING: MINERALS
RESERVED BY: WEYERHAEUSER TIMBER COMPANY
RECORDED: APRIL 16, 1924
RECORDING INFORMATION: 1857273
WE NOTE NO EXAMINATION HAS BEEN MADE REGARDING THE TRANSFER OR TAXATION OF THE RESERVED RIGHTS.
AFFECTS: PARCELS E AND F
6. ANY AND ALL OFFERS OF DEDICATION, CONDITIONS, RESTRICTIONS, EASEMENTS, BOUNDARY DISCREPANCIES OR ENCROACHMENTS, NOTES AND/OR PROVISIONS SHOWN OR DISCLOSED BY SHORT PLAT OR PLAT OF LENDONDO ON THE HIGHWAY ADDITION RECORDED IN VOLUME 30 OF PLATS, PAGE(S) 39.
AFFECTS: PARCELS E AND F
7. EASEMENT, INCLUDING TERMS AND PROVISIONS CONTAINED THEREIN:
RECORDING INFORMATION: 7810190746
IN FAVOR OF: PACIFIC NORTHWEST BELL TELEPHONE COMPANY, A WASHINGTON CORPORATION, ITS SUCCESSORS AND ASSIGNS
FOR: UNDERGROUND COMMUNICATION LINES, CONDUITS AND MANHOLE
AFFECTS THE EAST 5 FEET OF THE SOUTH 25 FEET OF PARCEL D (PLOTTED)
8. AGREEMENT AND THE TERMS AND CONDITIONS THEREOF:
BETWEEN: FEDERAL WAY WATER AND SEWER DISTRICT, KING COUNTY, A MUNICIPAL CORPORATION AND: NORTHWEST HERITAGE GROUP, INC., RECORDING INFORMATION: 8711170806
THE LIEN CREATED BY SAID AGREEMENT WAS RELEASED BY INSTRUMENT RECORDED NOVEMBER 16, 1988 UNDER RECORDING NO. 8811161176.
AFFECTS: PORTION OF PARCEL A
9. A RECORD OF SURVEY RECORDED JUNE 19, 1991 UNDER RECORDING NO. 9106199005 SAID SURVEY DISCLOSES THE FOLLOWING MATTERS:
(A) ENCROACHMENT OF CONCRETE PADS, WOOD SHED AND WIRE FENCE ACROSS WESTERN LINE OF LOT 6.
AFFECTS: PARCELS A THROUGH D
10. CONDITIONS, NOTES, EASEMENTS, PROVISIONS AND/OR ENCROACHMENTS CONTAINED OR DELINEATED ON THE FACE OF SURVEY NO. 9703135005, IN KING COUNTY, WASHINGTON AS INSTRUMENT NO. 9703135005, INCLUDING BUT NOT LIMITED TO THE FOLLOWING MATTERS:
(A) HOG WIRE FENCE ALONG THE WEST LINE OF PARCEL A DOES NOT CONFORM TO THE PROPERTY LINE.
AFFECTS: PARCELS A THROUGH D
11. CONDITIONS, NOTES, EASEMENTS, PROVISIONS AND/OR ENCROACHMENTS CONTAINED OR DELINEATED ON THE FACE OF SURVEY NO. 97014 RECORDED IN KING COUNTY, WASHINGTON AS INSTRUMENT NO. 97014 RECORDED IN KING COUNTY, WASHINGTON AS INSTRUMENT NO. 9702330005 AND 9702889003, INCLUDING BUT NOT LIMITED TO THE FOLLOWING MATTERS:
A) VARIOUS FENCES ALONG THE NORTH, SOUTH AND WEST LINES DO NOT CONFORM TO THE PROPERTY LINES.
B) LAWN ON NORTHERLY ADJOINING PROPERTY EXTENDS UP TO 8.0 FEET OVER THE NORTH LINE OF PARCEL A.
C) SHED ON WESTERLY ADJOINING PROPERTY ENCROACHES UP TO 0.3 FEET OVER THE WEST LINE OF PARCEL A.
D) GUY WIRES LIE 3.6 FEET AND 1.8 FEET EAST OF THE EAST LINE IN PACIFIC HIGHWAY SOUTH.
AFFECTS: PARCELS A THROUGH D
12. AGREEMENT AND THE TERMS AND CONDITIONS THEREOF:
BETWEEN: LAKEHAVEN UTILITY DISTRICT, KING COUNTY, A MUNICIPAL CORPORATION OF THE STATE OF WASHINGTON
AND: GREGORY REAL ESTATE THREE, L.L.C., AND OR ASSIGNS
RECORDING INFORMATION: 20120803000257
SAID AGREEMENT WAS AMENDED BY INSTRUMENT RECORDED UNDER RECORDING NO. 20170404000639
AFFECTS: PARCELS A THROUGH D
13. EASEMENT, INCLUDING TERMS AND PROVISIONS CONTAINED THEREIN:
RECORDING INFORMATION: 20130123000153
IN FAVOR OF: LAKEHAVEN UTILITY DISTRICT, A MUNICIPAL CORPORATION OF KING COUNTY, WASHINGTON, ITS SUCCESSORS, AGENTS, DESIGNEES OR ASSIGNS.
FOR: EASEMENT FOR WATER AND SEWER FACILITIES
AFFECTS: PARCELS E AND F
(EASEMENT IS 15TH AVE. S. LYING NORTHERLY OF PARCEL A, RIGHT OF WAY SHOWN ON PAGE 5)
14. RESERVATIONS AND EXCEPTIONS, INCLUDING THE TERMS AND CONDITIONS THEREOF:
RESERVING: MINERALS
RESERVED BY: ORRI ENERGY, INC., A COLORADO CORPORATION
RECORDED: JUNE 13, 2017
RECORDING INFORMATION: 20170813001558
WE NOTE NO EXAMINATION HAS BEEN MADE REGARDING THE TRANSFER OR TAXATION OF THE RESERVED RIGHTS.
AFFECTS: PARCELS A THROUGH D
15. EASEMENT, INCLUDING TERMS AND PROVISIONS CONTAINED THEREIN:
RECORDED: DECEMBER 14, 2017
RECORDING INFORMATION: 20171214000934
IN FAVOR OF: PUGET SOUND ENERGY, INC., A WASHINGTON CORPORATION FOR: ELECTRIC AND/OR GAS TRANSMISSION AND/OR DISTRIBUTION SYSTEM
AFFECTS: PARCELS A THROUGH E



SURVEYOR'S NOTES

1. BASIS OF BEARING: NAD 83-2011 (EPOCH 2010.00), WASHINGTON NORTH ZONE
2. EQUIPMENT USED: GEOMAX ZOOM 90 TOTAL STATION
3. THIS SURVEY COMPLIES WITH ALL STANDARDS AND GUIDELINES OF THE "SURVEY RECORDING ACT", CHAPTER 58.09 RCW AND 332-130 WAC.
4. ALL MEASURING INSTRUMENTS UTILIZED DURING THE COURSE OF THIS SURVEY ARE MAINTAINED IN CONFORMANCE WITH MANUFACTURERS SPECIFICATIONS.

REFERENCES

- R1 PLAT OF APPLEWOOD APN 198508150998
- R2 RECORD OF SURVEY APN 198710269003
- R3 RECORD OF SURVEY APN 8106199005
- R4 LOT LINE ADJUSTMENT APN 200305390011

CITY OF DES MOINES
LUA2012-0001

SE CORNER
SECTION 32
CALC POSITION PER
PLAT OF APPLEWOOD



C.E.S. NW INC.
CIVIL ENGINEERING & SURVEYING

129 29TH ST. NE, SUITE D BUS: (253) 848-4262
PUYALLUP, WA 98372
JOB 16117 SHEET 3 OF 8

PACIFIC HEIGHTS

PLANNED UNIT DEVELOPMENT
A PORTION OF THE NE 1/4 OF THE SE 1/4 AND OF THE SE 1/4 OF THE NE 1/4, SECTION 32, AND THE SW 1/4 OF THE NW 1/4 AND OF THE NW 1/4 OF THE SW 1/4, SECTION 33 ALL IN TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., CITY OF DES MOINES AND CITY OF FEDERAL WAY, KING COUNTY, WASHINGTON

VOL/PG



SCALE: 1"= 30'



CONTINUED ON SHEET 5

TRACT 'A'
140,719 SF
WETLAND

CONTINUED ON SHEET 6

Curve Table			
Curve #	Length	Radius	Delta
C1	5.69'	225.00'	1°26'54"
C2	21.80'	14.00'	89°14'09"
C3	10.62'	275.00'	2°12'45"
C4	16.32'	265.00'	3°31'43"
C5	40.42'	265.00'	8°44'23"
C6	33.58'	265.00'	7°15'34"
C7	35.99'	265.00'	7°46'52"
C8	42.77'	265.00'	9°14'53"
C9	43.48'	116.00'	21°28'39"
C10	29.29'	116.00'	14°28'03"
C11	27.90'	116.00'	13°46'45"
C12	32.52'	265.00'	7°01'55"
C13	72.47'	83.50'	49°43'27"
C14	49.31'	265.00'	10°39'39"
C15	38.63'	265.00'	8°21'06"
C16	42.12'	265.00'	9°06'27"
C17	34.84'	265.00'	7°31'55"
C18	40.34'	265.00'	8°43'19"
C19	37.64'	265.00'	8°08'20"
C20	24.38'	30.00'	46°34'03"
C21	0.88'	50.00'	1°00'48"
C22	42.81'	50.00'	49°03'32"
C23	32.80'	50.00'	37°35'25"
C24	16.18'	50.00'	18°32'07"
C25	24.80'	50.00'	28°24'57"
C26	25.71'	50.00'	29°27'38"
C27	18.86'	50.00'	21°36'39"
C28	35.41'	50.00'	40°34'30"
C29	40.91'	50.00'	46°52'30"
C30	9.59'	30.00'	18°18'38"

Curve Table			
Curve #	Length	Radius	Delta
C31	14.80'	30.00'	28°15'25"
C32	49.70'	215.00'	13°14'36"
C33	56.57'	215.00'	15°04'34"
C34	74.69'	215.00'	19°54'13"
C35	64.95'	215.00'	17°18'34"
C36	57.65'	215.00'	15°21'43"
C37	44.91'	215.00'	11°58'06"
C38	12.15'	215.00'	3°14'19"
C39	23.98'	325.00'	4°13'40"
C40	18.04'	14.00'	73°49'35"
C41	48.77'	225.00'	12°25'06"
C42	40.55'	225.00'	10°19'29"
C43	6.43'	182.00'	2°01'28"
C44	85.41'	182.00'	26°53'17"
C45	134.85'	652.00'	11°51'02"
C46	13.17'	98.99'	7°37'31"
C47	36.46'	98.99'	21°06'22"
C48	21.23'	98.99'	12°17'14"
C49	20.24'	75.00'	15°27'37"
C50	18.29'	75.00'	13°58'27"
C51	15.11'	78.86'	10°58'32"
C52	34.95'	78.86'	25°23'42"
C53	8.69'	78.86'	6°18'43"
C54	12.86'	125.00'	5°53'42"
C55	40.66'	125.00'	18°38'22"
C56	27.59'	125.00'	12°38'48"
C57	25.11'	277.53'	5°11'03"
C58	42.82'	277.53'	8°50'25"
C59	47.79'	175.00'	15°38'53"
C60	30.28'	175.00'	9°54'53"

Curve Table			
Curve #	Length	Radius	Delta
C61	45.82'	175.00'	15°00'04"
C62	7.88'	175.00'	2°34'49"
C63	33.41'	232.00'	8°15'04"
C64	46.85'	232.00'	11°34'09"
C65	36.82'	232.00'	9°05'33"
C66	4.47'	702.00'	0°21'54"
C67	40.01'	702.00'	3°15'57"
C68	34.74'	702.00'	2°50'08"
C69	40.22'	702.00'	3°16'57"
C70	25.75'	702.00'	2°06'06"
C71	41.73'	5785.00'	0°24'48"
C72	45.23'	5785.00'	0°26'53"
C73	40.18'	5785.00'	0°23'52"
C74	47.68'	5785.00'	0°28'20"
C75	6.80'	5785.00'	0°04'03"
C76	37.87'	5790.00'	0°22'29"
C77	40.10'	5790.00'	0°23'49"
C78	40.08'	5790.00'	0°23'48"
C79	40.06'	5790.00'	0°23'47"
C80	40.05'	5790.00'	0°23'47"
C81	45.04'	5790.00'	0°26'45"
C82	40.03'	5790.00'	0°23'46"
C83	69.65'	5790.00'	0°41'21"
C84	40.92'	5790.00'	0°24'18"
C85	42.09'	5790.00'	0°24'59"
C86	112.87'	5790.00'	1°07'01"
C87	113.91'	5790.00'	1°07'38"
C88	39.27'	25.00'	50°00'00"
C89	17.52'	25.00'	40°08'34"

Line Table		
Line #	Length	Direction
L1	24.97'	N88°26'58"W
L2	15.00'	S0°09'54"W
L3	30.00'	N1°33'02"E
L4	25.00'	S88°26'58"E
L5	3.72'	N89°08'08"W
L6	7.35'	N89°08'08"W
L7	26.50'	N88°21'26"W
L8	16.66'	S11°06'59"E
L9	15.00'	S1°38'34"W
L10	21.80'	N31°13'59"E
L12	5.01'	S88°21'15"E

CITY OF DES MOINES
LUA2012-0001



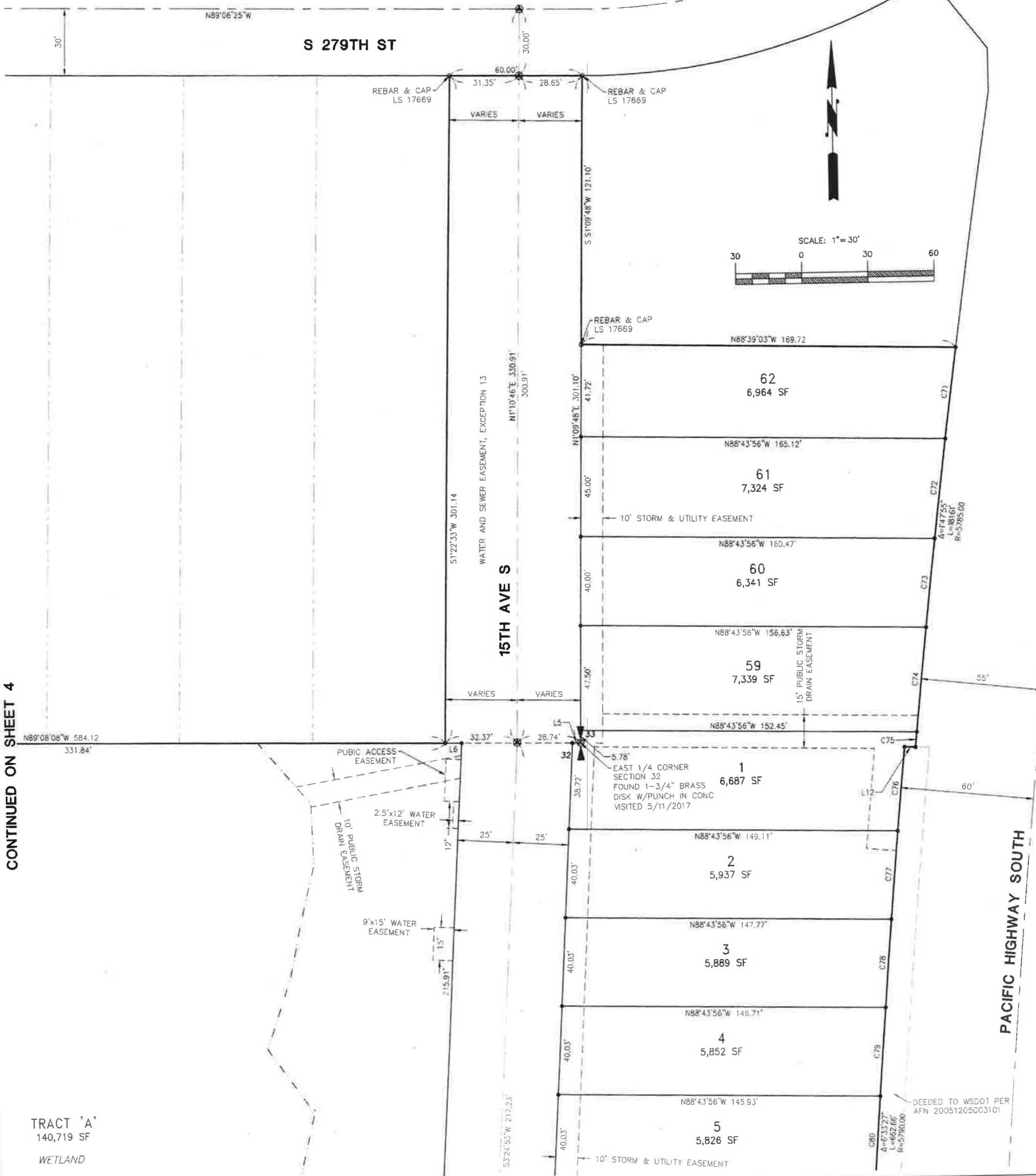
C.E.S. NW INC.
CIVIL ENGINEERING & SURVEYING

429 29TH ST. NE, SUITE D BUS: (253) 846-4282
PUYALLUP, WA 98372
JOB 16117 SHEET 4 OF 8

PACIFIC HEIGHTS

VOL/PG

PLANNED UNIT DEVELOPMENT
A PORTION OF THE NE 1/4 OF THE SE 1/4 AND OF THE SE 1/4 OF THE NE 1/4, SECTION 32, AND THE
SW 1/4 OF THE NW 1/4 AND OF THE NW 1/4 OF THE SW 1/4, SECTION 33 ALL IN TOWNSHIP 22 NORTH,
RANGE 4 EAST, W.M., CITY OF DES MOINES AND CITY OF FEDERAL WAY, KING COUNTY, WASHINGTON



CONTINUED ON SHEET 4

PACIFIC HIGHWAY SOUTH

TRACT 'A'
140,719 SF
WETLAND

CONTINUED ON SHEET 7

CITY OF DES MOINES
LUA2012-0001



C.E.S. NW INC.
CIVIL ENGINEERING & SURVEYING

429 29TH ST. NE, SUITE D BUS: (253) 848-4282
PUYALLUP, WA 98372
JOB 16117 SHEET 5 OF 8

PACIFIC HEIGHTS

PLANNED UNIT DEVELOPMENT

A PORTION OF THE NE 1/4 OF THE SE 1/4 AND OF THE SE 1/4 OF THE NE 1/4, SECTION 32, AND THE SW 1/4 OF THE NW 1/4 AND OF THE NW 1/4 OF THE SW 1/4, SECTION 33 ALL IN TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., CITY OF DES MOINES AND CITY OF FEDERAL WAY, KING COUNTY, WASHINGTON
CONTINUED ON SHEET 4

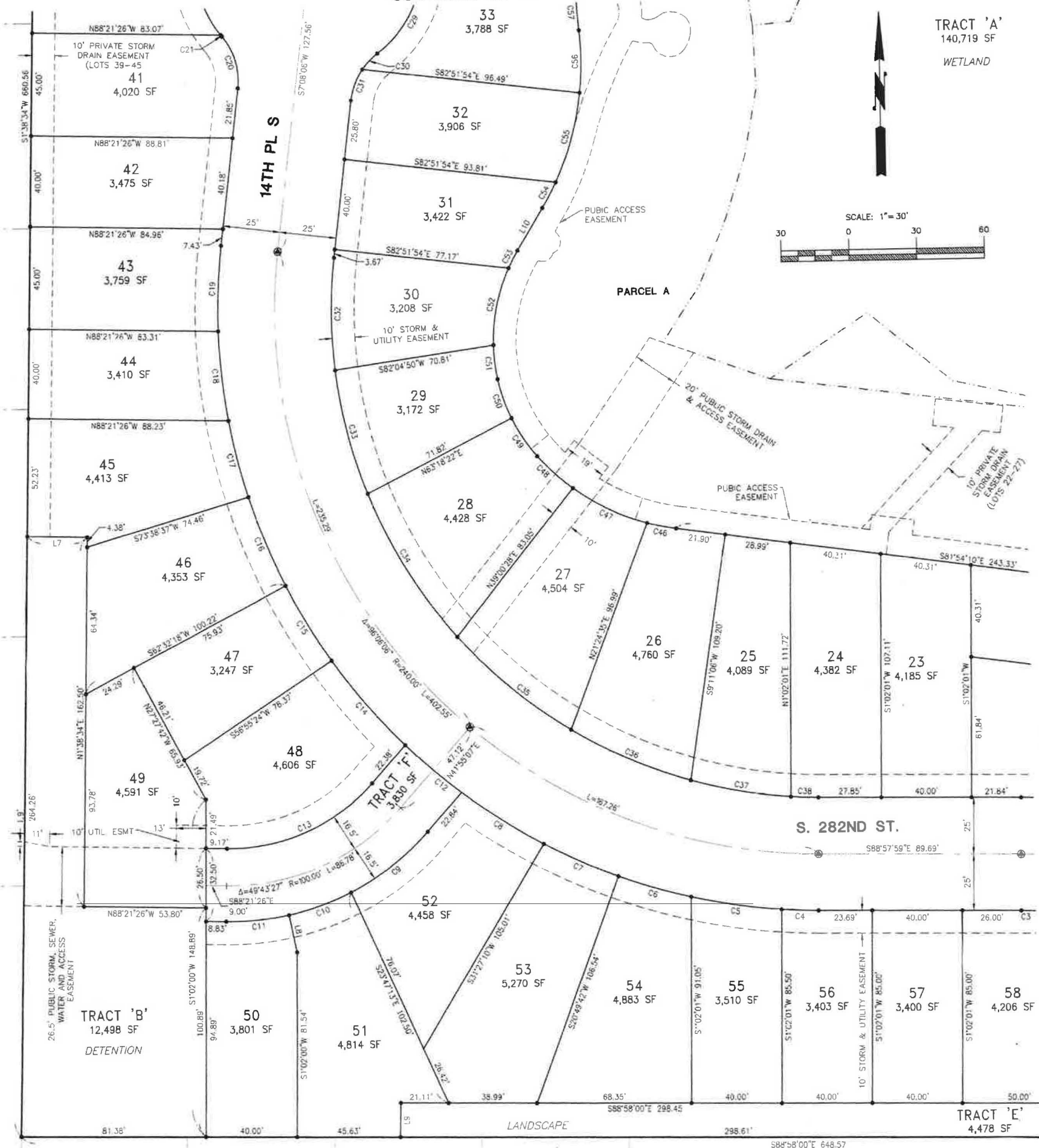
VOL/PG

TRACT 'A'
140,719 SF
WETLAND

SCALE: 1"=30'



CONTINUED ON SHEET 7



CITY OF DES MOINES
LUA2012-0001



C.E.S. NW INC.
CIVIL ENGINEERING & SURVEYING

429 29TH ST. NE, SUITE D BUS: (253) 848-4262
PUYALLUP, WA 98372
JOB 16117 SHEET 6 OF 8

PACIFIC HEIGHTS

PLANNED UNIT DEVELOPMENT

A PORTION OF THE NE 1/4 OF THE SE 1/4 AND OF THE SE 1/4 OF THE NE 1/4, SECTION 32, AND THE SW 1/4 OF THE NW 1/4 AND OF THE NW 1/4 OF THE SW 1/4, SECTION 33 ALL IN TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., CITY OF DES MOINES AND CITY OF FEDERAL WAY, KING COUNTY, WASHINGTON

VOL/PG

CONTINUED ON SHEET 5



CONTINUED ON SHEET 6

CITY OF DES MOINES
LUA2012-0001



C.E.S. NW INC.
CIVIL ENGINEERING & SURVEYING

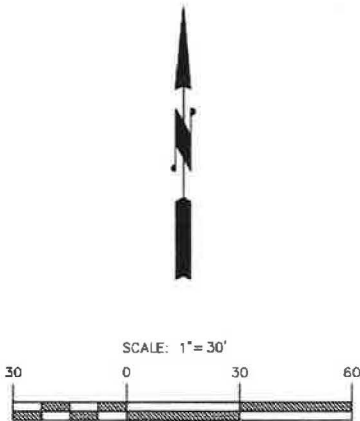
429 29TH ST. NE, SUITE D BUS: (253) 848-4282
PUYALLUP, WA 98372
JOB 16117 SHEET 7 OF 8

PACIFIC HEIGHTS

PLANNED UNIT DEVELOPMENT

A PORTION OF THE NE 1/4 OF THE 9E 1/4 AND OF THE SE 1/4 OF THE NE 1/4, SECTION 32, AND THE SW 1/4 OF THE NW 1/4 AND OF THE NW 1/4 OF THE SW 1/4, SECTION 33 ALL IN TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., CITY OF DES MOINES AND CITY OF FEDERAL WAY, KING COUNTY, WASHINGTON

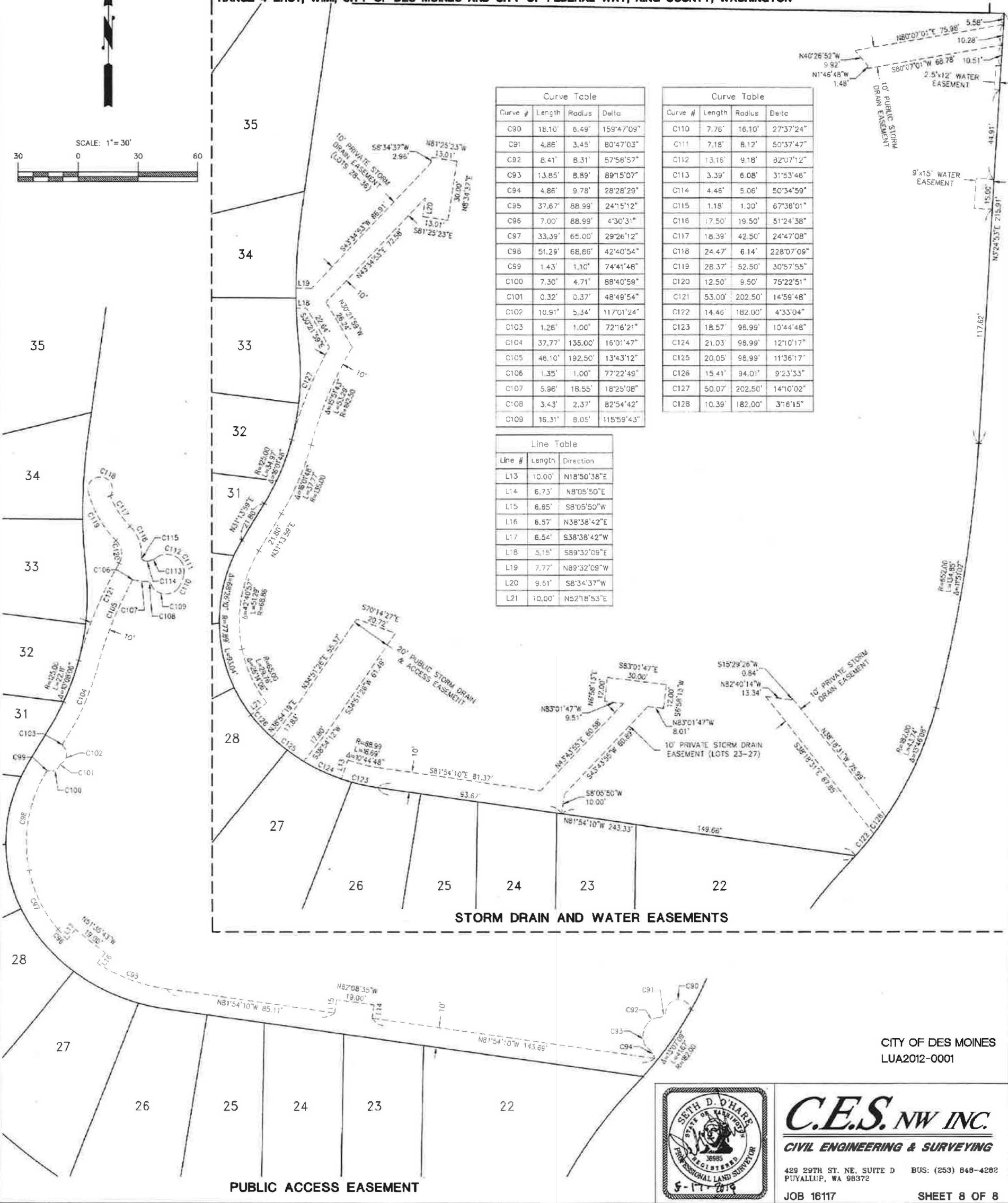
VOL / PG



Curve Table			
Curve #	Length	Radius	Delta
C90	18.10'	6.49'	159°47'09"
C91	4.88'	3.45'	80°47'03"
C92	8.41'	8.31'	57°56'57"
C93	13.85'	8.89'	89°15'07"
C94	4.88'	9.78'	28°28'29"
C95	37.67'	88.99'	24°15'12"
C96	7.00'	88.99'	4°30'31"
C97	33.39'	65.00'	29°26'12"
C98	51.29'	68.86'	42°40'54"
C99	1.43'	1.10'	74°41'48"
C100	7.30'	4.71'	88°40'59"
C101	0.32'	0.37'	48°49'54"
C102	10.91'	5.34'	117°01'24"
C103	1.26'	1.00'	72°16'21"
C104	37.77'	135.00'	16°01'47"
C105	46.10'	192.50'	13°43'12"
C106	1.35'	1.00'	77°22'49"
C107	5.96'	18.55'	18°25'08"
C108	3.43'	2.37'	82°54'42"
C109	16.31'	8.05'	115°59'43"

Curve Table			
Curve #	Length	Radius	Delta
C110	7.76'	16.10'	27°37'24"
C111	7.18'	8.12'	50°37'47"
C112	13.16'	9.18'	82°07'12"
C113	3.39'	6.08'	31°53'46"
C114	4.46'	5.06'	50°34'59"
C115	1.18'	1.00'	67°36'01"
C116	17.50'	19.50'	51°24'38"
C117	18.39'	42.50'	24°47'08"
C118	24.47'	6.14'	228°07'09"
C119	28.37'	52.50'	30°57'55"
C120	12.50'	9.50'	75°22'51"
C121	53.00'	202.50'	14°59'48"
C122	14.46'	182.00'	4°33'04"
C123	18.57'	98.99'	10°44'48"
C124	21.03'	98.99'	12°10'17"
C125	20.05'	98.99'	11°36'17"
C126	15.41'	94.01'	9°23'33"
C127	50.07'	202.50'	14°10'02"
C128	10.39'	182.00'	3°16'15"

Line Table		
Line #	Length	Direction
L13	10.00'	N18°50'38"E
L14	6.73'	N8°05'50"E
L15	6.65'	S8°05'50"W
L16	6.57'	N38°38'42"E
L17	6.54'	S38°38'42"W
L18	5.15'	S89°32'09"E
L19	7.77'	N89°32'09"W
L20	9.61'	S8°34'37"W
L21	10.00'	N52°18'53"E



CITY OF DES MOINES
LUA2012-0001



C.E.S. NW INC.
CIVIL ENGINEERING & SURVEYING

429 29TH ST. NE, SUITE D BUS: (253) 848-4282
PUYALLUP, WA 98372
JOB 16117 SHEET 8 OF 8

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Compensation for Non-represented
Employees

FOR AGENDA OF: July 11, 2019

DEPT. OF ORIGIN: Human Resources

DATE SUBMITTED: July 3, 2019

ATTACHMENTS:

1. Draft Resolution No. 19-072:
Compensation for Non-Represented
Employees

CLEARANCES:

- ☐ Community Development _____
- ☐ Marina _____
- ☐ Parks, Recreation & Senior Services _____
- ☐ Public Works _____

CHIEF OPERATIONS OFFICER: _____

- ☒ Legal *MM*
- ☒ Finance *OR*
- ☐ Courts _____
- ☐ Police _____

**APPROVED BY CITY MANAGER
FOR SUBMITTAL:** _____

Purpose and Recommendation

The purpose of this agenda item is for City Council to consider the proposed Resolution regarding compensation for regular, non-represented employees. It is recommended that the City Council pass Resolution No. 19-072, providing wage increases which are equitable in comparison to the recently settled Des Moines Police Guild Collective Bargaining Agreement.

Suggested Motion

Motion: "I move to adopt Draft Resolution No. 19-072 regarding compensation for non-represented employees from January 1, 2019, through December 31, 2019, providing wage increases which are equitable in comparison to the Des Moines Police Guild Collective Bargaining Agreement."

Background

The City's regular non-represented employees fall into three groups; the General Employees, who are eligible for overtime compensation under the Fair Labor Standards Act (FLSA); the Exempt Employees, who are exempt under the FLSA; and the Directors. In December 2016, both the Exempt and General Employee groups formally acknowledged that they are not labor/union units, expressing their preference to work with management in a collaborative, advisory capacity, without being bound by the constraints of RCW 41.56. The City Council sets salary rates and benefits for non-represented employees by resolution and has ordained a policy to treat the General and Exempt employees and Directors equitably in relation to those represented by labor unions, per DMMC 2.12.010.

Discussion

On May 23, 2019, the City Council approved a Collective Bargaining Agreement with the Des Moines Police Guild for the period beginning January 1, 2019 and ending December 31, 2021. The agreement provided for a wage increase for the employees covered by the agreement of 3.25%. Resolution No. 1366 set the compensation for non-represented employees provided for an increase of 1.9% for the year 2019. The Draft Resolution would also increase contributions to HRA-VEBA accounts for employees enrolled in certain health insurance plans from \$580 to \$750 for individual only coverage and from \$1,130 to \$1,250 for family coverage, commensurate with the Guild Agreement.

By approving this Resolution, the Council would be aligning the City's non-represented employee's compensation and benefits with that of the Police Guild for the year 2019. Staff is recommending that the City Council address compensation for the years 2020 and 2021 for non-represented employees during the budget process.

Alternatives

The Council could choose not to approve the Resolution and direct the City Manager to consider alternative wage and benefits packages for non-represented employees.

Financial Impact

Finance has accounted for the proposed increase and has determined that a sustainable budget through 2020 will be maintained with passage of this Draft Resolution.

Recommendation or Conclusion

Administration recommends approval of the proposed Agreement as it contains those changes and compromises authorized by the Council.

CITY ATTORNEY'S FIRST DRAFT 07/03/2019**DRAFT RESOLUTION NO. 19-072**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, regarding salaries, wages and benefits for non-represented employees for the period January 1, 2019, through December 31, 2019 and amending Resolution No. 1366.

WHEREAS, this Resolution pertains to all regular employees, excluding those who are represented by labor organizations, specifically, Teamsters Local 763, Des Moines Police Guild, and Des Moines Police Management Association, and

WHEREAS, the City's non-represented employees fall into three groups: General Employees, those who are eligible for overtime compensation under the Fair Labor Standards Act (FLSA); Exempt Employees, those who are exempt under the FLSA; and the remaining exempt employees known as Directors, which for purposes of this Resolution includes all department heads, the Assistant Chief of Police, the Chief Operations Officer, and the City Manager, and

WHEREAS, in December 2016, the General Employees and Exempt Employees entered into memorandums of understanding with the City formally acknowledging that they are not collective bargaining organizations, preferring to seek mutual understanding for employees and city management in an informal, collaborative process to discuss issues of concern in the workforce without being bound by the constraints of chapter 41.56 RCW, and

WHEREAS, the parties further agreed that the City will treat non-represented employees equitably in relation to those represented by labor unions in accordance with DMMC 2.12.10, with the exception of the constraints of bargaining units with binding arbitration which necessitates a different outcome for certain uniformed groups of employees, and

WHEREAS, the City Council enacted Resolution No. 1366, setting the annual pay schedules for non-represented employees for the period of January 1, 2017 through December 31, 2019, and

WHEREAS, the City Council recently approved a Collective Bargaining Agreement with the Des Moines Police Guild for the period January 1, 2019, through December 31, 2021 which includes

a larger wage increase for the year 2019 than is provided for in Resolution 1366, and

WHEREAS, the City Council has determined that it is in the best interest of the citizens of Des Moines for the City to provide wage increases and benefit adjustments to non-represented employees consistent with the Des Moines Police Guild for the year 2019; now, therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES RESOLVES AS FOLLOWS:

Sec. 1. Section 2 of Resolution No. 1366 is amended to read as follows:

Salaries and wages. Salaries and wages shall be increased as follows, maintaining the established differentials between pay steps and ranges:

(1) 1.36% increase effective January 1, 2017, providing a 0.36% retroactive pay increase in addition to the 1.0% increase already implemented per Resolution No. 1355; such retroactive pay increase shall apply to current employees on the payroll as of the date of Council approval of this Resolution;

(2) 1.9% increase effective January 1, 2018; and

(3) ~~1.9%~~3.25% increase effective January 1, 2019.

Sec. 2. Section 3 of Resolution No. 1366 is amended to read as follows:

Medical plan options. Effective January 1, 2018, the City shall pay medical premiums and make Health Reimbursement Arrangement (HRA) contributions for eligible employees with the following options:

(1) The City will pay 90% of eligible employee's premium and 80% of the spouse and dependents' premiums for the HealthFirst 250 and the Kaiser Permanente \$200 Deductible health insurance plans. For employees enrolling in these plans, the City will make the following annual contributions to the employee's HRA VEBA for the years 2017 and 2018: \$580 for employee only coverage; or \$1,130 for any family coverage. For employees enrolling in these plans, the City will make the following annual contributions to

the employee's HRA VEBA for the year 2019: \$750 for employee only coverage; or \$1,250 for any family coverage. For new hire employees, HRA VEBA funding will be prorated based on the number of months covered for the remainder of the calendar year.

(2) The City will pay 100% of eligible employee's premium and 90% of the spouse and dependents' premiums for the Regence High Deductible Health Plan (HDHP) and the Kaiser Permanente HDHP; for employees enrolling in these plans, the City will provide a notional Health Reimbursement Arrangement (HRA) of \$1,500 for employee only coverage, or \$3,000 for any family coverage. The City will fund the notional HRA by preloading a benefits debit card for each employee on an annual basis. Once the deductible has been met, and the employee has also paid coinsurance costs \$1,500 above and beyond the deductible for employee only coverage, or \$3,000 above and beyond the deductible for any family coverage, the City will pay any further coinsurance costs which apply to the employee's annual out-of-pocket limit. Any unused balance in the notional HRA will be rolled into the employee's HRA VEBA account in April of the following year. For new hire employees, notional HRA funding will be prorated based on the number of months covered for the remainder of the calendar year.

(3) If an employee opts out of the City's medical plans entirely, the employee will receive their choice of cash or Section 457 deferred compensation payments in lieu of the medical benefits. Such payment will be equal to twenty-five percent (25%) of the City's savings, based on the maximum medical plan premiums available plus the HRA contributions the City would have paid for the employee and any spouse and/or dependents who are eligible for City medical coverage. To be eligible for such payments, the employee must provide proof of comprehensive group coverage under another medical insurance plan through an employer or other entity that covers all individuals in a group. Individual medical insurance purchased on an individual or family basis does not qualify under this plan. The City reserves the right to suspend or discontinue such payment in lieu of City medical coverage for future years. Employees will be notified during the open enrollment period if this option is suspended or discontinued.

Sec. 3. Retroactivity. The 3.25% increase for the period of January 1, 2019 through December 31, 2019 effective January 1, 2019, shall provide a 1.35% retroactive pay increase in addition to the 1.9% increase already implemented per Resolution No. 1366; such retroactive pay increase shall apply to current

employees on the payroll as of the date of Council approval of this Resolution.

Sec. 4. Conflicts. Where a conflict exists between the terms of this Resolution and the Des Moines Personnel Manual, this Resolution shall control.

Sec. 5. Ratification and confirmation. Any acts consistent with the authority and prior to the effective date of this Resolution are hereby ratified and confirmed.

ADOPTED BY the City Council of the City of Des Moines, Washington this ____th day of _____, 2019, and signed in authentication thereof this ____th day of _____, 2019.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Third Reading and Continued Public Hearing to consider Draft Ordinance No. 19-048 relating to zoning, amending the use table in DMMC 18.52.010B, adding and revising definitions in DMMC 18.01.050.

ATTACHMENTS:

1. Draft Ordinance No. 19-048
2. Ordinance 1714
3. Written Public Comments
4. DSHS Comments and Response

FOR AGENDA OF: July 11, 2019

DEPT. OF ORIGIN: Community Development

DATE SUBMITTED: July 3, 2019

CLEARANCES:

- ☒ Community Development *SWC*
☐ Marina _____
☐ Parks, Recreation & Senior Services _____
☐ Public Works _____

CHIEF OPERATIONS OFFICER: *DSB*

- ☒ Legal *MH*
☐ Finance _____
☐ Courts _____
☐ Police _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation

The purpose of this agenda item is for the City Council to continue the public hearing and consider Draft Ordinance No. 19-048 (Attachment 1) amending the use table in DMMC 18.52.010B, adding and revising definitions in DMMC 18.01.050.

Suggested Motion

“I move to enact Draft Ordinance No. 19-048 amending the use table in DMMC 18.52.010B and adding and revising definitions in DMMC 18.01.050 to make the interim zoning controls enacted by Ordinance 1714 permanent.”

Background

The City of Des Moines adopted a policy for identifying and siting Essential Public Facilities (EPF) in Ordinance no. 1697, codified in Chapter 18.255 DMMC. EPFs are public facilities that are typically difficult to site, including in-patient facilities, mental health facilities, group homes, and secure community transition facilities. In 2014, the State of Washington began offering licenses to operate a new type of residential facility serving up to 16 individuals who have complex personal care and behavioral challenges known as Enhanced Services Facilities (“ESFs”) under chapter 70.97 RCW.

In order to clarify the City’s existing requirements and definitions, the proposed amendments revise the definitions and use table in the Des Moines Municipal Code to account for this new type of essential public facility. These facilities would be allowed only in the Pacific Ridge Commercial Zone and be subject to the appropriate permitting process as well as the essential public facilities regulations.

Discussion

On March 14, 2019 the Des Moines City Council adopted Ordinance 1714 adopting the proposed zoning amendments as interim regulations, declaring an emergency and setting the hearing date for May 9, 2019. Prior to and during the May 9th public hearing, a number of verbal and written comments were received, including a letter from the State Department of Social and Health Services (DSHS). The DSHS letter expressed concern that the proposed regulations were too restrictive. The hearing was continued to June 27, 2019, primarily to allow for discussion with DSHS.

On June 3, 2019 DSHS staff were provided a tour of the Pacific Ridge Commercial area of the City, and met with City staff to discuss their previous comment letter. Upon conclusion of the tour and meeting, DSHS staff indicated that their questions were answered and they no longer had concerns related to Draft Ordinance 19-048. A follow-up letter was received from DSHS on June 18, 2019 thanking the City for the meeting and tour and encouraging the City to expand the allowed zones for ESFs in the future. On June 27, 2019, the City Council passed Draft Ordinance 19-048 to a third reading and continued public hearing on July 11, 2019.

Alternatives

The City Council may:

1. Enact Draft Ordinance 19-048 as written or with amendments.
2. Repeal Ordinance 1714, removing the interim zoning control.
3. Decline to enact Draft Ordinance 19-048. Under this alternative, the interim zoning control would remain in effect until September 14, 2019, at which time the interim zoning controls would expire.

Financial Impact

N/A

Recommendation

Administration recommends enactment of Draft Ordinance 19-048 as written.

CITY COUNCIL'S DRAFT 06/20/2019**DRAFT ORDINANCE NO. 19-048**

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to zoning, amending the use table in DMMC 18.52.010B, adding and revising definitions in DMMC 18.01.050.

WHEREAS, the City of Des Moines has enacted a comprehensive land use plan codified at Title 18 DMMC, and

WHEREAS, Cities such as Des Moines that are required to plan under the State Growth Management Act, chapter 36.70A RCW, are required to adopt a process for identifying and siting of Essential Public Facilities ("EPF's"), and

WHEREAS, the City of Des Moines has adopted a policy for identifying and siting Essential Public Facilities in Ordinance no. 1697, codified at chapter 18.255 DMMC, and

WHEREAS, EPF's are public facilities that are typically difficult to site, including in-patient facilities, mental health facilities, group homes, and secure community transition facilities, and

WHEREAS, in 2014 the State of Washington began offering licenses to operate a new type of residential setting serving up to 16 individuals who have complex personal care and behavioral challenges known as Enhanced Services Facilities ("ESF's") under chapter 70.97 RCW, and

WHEREAS, a typical ESF resident will have moved from a State or local psychiatric hospital, and

WHEREAS, a person may only be admitted to an ESF if the person has a mental disorder, chemical dependency disorder, or both; an organic or traumatic brain injury; or a cognitive impairment that results in symptoms or behaviors requiring supervision and facility services, and

WHEREAS, a person may only be admitted to an ESF if the person additionally requires daily care by or under the supervision of a mental health professional, chemical dependency professional, or nurse; or assistance with three or more activities of daily living, and

Ordinance No. ____
Page 2 of 6

WHEREAS, a person may only be admitted to an ESF if, in addition to the previous two requirements, the person has two or more of the following: self-endangering behaviors that are frequent or difficult to manage; aggressive, threatening, or assaultive behaviors that create a risk to the health or safety of other residents or staff, or a significant risk to property and these behaviors are frequent or difficult to manage; intrusive behaviors that put residents or staff at risk; complex medication needs and those needs include psychotropic medications; a history of or likelihood of unsuccessful placements in either a licensed facility or other state facility or a history of rejected applications for admission to other licensed facilities based on the person's behaviors, history, or security needs; a history of frequent or protracted mental health hospitalizations; a history of offenses against a person or felony offenses that created substantial damage to property, and

WHEREAS, an ESF is required to maintain sufficient numbers of staff with the appropriate credentials and training to provide residents with such services as mental health treatment, chemical dependency treatment, and security as needed, and

WHEREAS, the State licenses ESF's as an entity of a different character than nursing homes; assisted living facilities; adult family homes; group training homes; and residential treatment facilities, and

WHEREAS, ESF's are a land use that is not specifically provided for in the Des Moines Zoning Code, and

WHEREAS, it is appropriate to identify Enhanced Service Facilities as a specific use type within the City Zoning Code and to designate zones in which the use may be permitted, not permitted or allowed by conditional use permit or unclassified use permit, and

WHEREAS, services offered by an ESF and the special needs of the residents make these facilities difficult to site similar to in-patient facilities, mental health facilities, group homes, and secure community transition facilities, and

Ordinance No. ____
Page 3 of 6

WHEREAS, these characteristics make it appropriate for the City of Des Moines to identify Enhanced Services Facilities as Essential Public Facilities, and

WHEREAS, in accordance with RCW 35A.63.220, interim zoning controls may be effective for no longer than six months, but may be effective for up to a year if a work plan is developed for related studies providing for such a longer period, and

WHEREAS, the City Council enacted Ordinance No. 1714 as an interim zoning ordinance on March 14, 2019 in accordance with RCW 35A.63.200 to provide for appropriate land use regulation of ESF's, and

WHEREAS, the City Council in Ordinance No. 1714 set the date for a public hearing on the interim zoning ordinance for May 9, 2019, being less than sixty days after the adoption of the interim zoning ordinance, and

WHEREAS, notice of the public hearing was issued on April 24, 2019 in accordance with the DMMC, and

WHEREAS, the Community Development Director acting as the SEPA responsible official reviewed this proposed non-project action and determined that the proposed textual code amendments are within the scope of the existing environmental documents and fulfilled the SEPA requirements established by chapter 197-11 WAC and DMMC 16.05.04 pursuant to WAC 197-11-600 and DMMC 16.05.280, and

WHEREAS, the textual code amendments proposed in this Draft Ordinance were provided to the Department of Commerce as required by RCW 36.70A.106, and

WHEREAS, a public hearing was held on May 9, 2019 and continued to June 27th and July 11, 2019, and all persons wishing to be heard were heard, and

WHEREAS, the City Council finds that confirming the amendments to the Des Moines Municipal Code enacted in Ordinance 1714 are appropriate and necessary for the preservation of the public health and welfare; now therefore,

Ordinance No. ____
Page 4 of 6

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. DMMC 18.52.010B and section 133 of Ordinance No. 1591 as amended by section 12 of Ordinance No. 1601 as amended by section 8 of Ordinance No. 1618-A as amended by section 2 of Ordinance No. 1644 as amended by section 1 of Ordinance No. 1645 as amended by section 8 of Ordinance No. 1655 as amended by section 4 of Ordinance No. 1656 as amended by section 2 of Ordinance No. 1661 as amended by section 2 of Ordinance No. 1669 as amended by section 1 of Ordinance No. 1672 as amended by section 3 of Ordinance No. 1697 is amended to add or revise uses as follows:

Use is: P: Permitted P/L: Permitted, but with special limitations CUP: Conditional use review required UUP: Unclassified use review required	NC	I-C	B-P	C-C	D-C	H-C	PR-C	T-C	W-C
...									
Enhanced Services Facilities							UUP /L[84, 85]		
...									
Essential public facilities not otherwise listed			UUP /L[84, 85]			UUP /L[84, 85]	UUP /L[84, 85]		
...									
Hospitals, Mental			UUP /L[84, 85]				UUP /L[84, 85]		
...									

Sec. 2. DMMC 18.01.050 and section 5 of Ordinance No. 1591 as amended by section 1 of Ordinance No. 1628 as amended by section 1 of Ordinance No. 1655 as amended by section 1 of Ordinance No. 1661 as amended by section 3 of Ordinance No. 1669 as amended by section 15 of Ordinance No. 1671 as amended by

Ordinance No. ____
 Page 5 of 6

section 1 of Ordinance No. 1697 are amended to add or revise the following definitions:

"Enhanced services facility" means a facility licensed by the Washington State Department of Social and Health Services under chapter 70.97 RCW.

"Essential public facilities (EPF)" include those facilities that are typically difficult to site, as defined in RCW 36.70A.200 and WAC 365-196-560, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, regional transit authority facilities as defined in RCW 81.112.020, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, enhanced services facilities, and secure community transition facilities as defined in RCW 71.09.020.

~~"Mental hospital" means an institution licensed by state agencies under the provisions of law to offer facilities, care and treatment for cases of mental and nervous disorders, and alcoholics. Establishments limiting services to juveniles below the age of five years, and establishments housing and caring for cases of cerebral palsy are not considered mental hospitals.~~

~~"Nursing home" means a facilities for patients who are recovering from an illness, or receiving care for chronic conditions, mental or physical disabilities, terminal illness, alcohol or drug inpatient treatment. Care may include inpatient administration of medicine, preparation of special diets, bedside nursing care, and treatment by a physician or psychiatrist facility licensed by the Washington State Department of Social and Health Services under chapter 18.51 RCW.~~

Ordinance No. ____
 Page 6 of 6

Sec. 3. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

(2) If the provisions of this Ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this Ordinance is deemed to control.

Sec. 4. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage and approval in accordance with law.

PASSED BY the City Council of the City of Des Moines this ____ day of ____, 2019 and signed in authentication thereof this ____ day of ____, 2019.

 M A Y O R

APPROVED AS TO FORM:

 City Attorney

ATTEST:

 City Clerk

Published: _____

Effective Date: _____

ORDINANCE NO. 1714

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to zoning, enacting an interim zoning Ordinance relating to land use, amending the use table in DMMC 18.52.010B, adding and revising definitions in DMMC 18.01.050, setting a public hearing, and declaring an emergency.

WHEREAS, the City of Des Moines has enacted a comprehensive land use plan codified at Title 18 DMMC, and

WHEREAS, Cities such as Des Moines that are required to plan under the State Growth Management Act, chapter 36.70A RCW, are required to adopt a process for identifying and siting of Essential Public Facilities ("EPF's"), and

WHEREAS, the City of Des Moines has adopted a policy for identifying and siting Essential Public Facilities in Ordinance no. 1697, codified at chapter 18.255 DMMC, and

WHEREAS, EPF's are public facilities that are typically difficult to site, including in-patient facilities, mental health facilities, group homes, and secure community transition facilities, and

WHEREAS, in 2014 the State of Washington began offering licenses to operate a new type of residential setting serving up to 16 individuals who have complex personal care and behavioral challenges known as Enhanced Services Facilities ("ESF's") under chapter 70.97 RCW, and

WHEREAS, a typical ESF resident will have moved from a State or local psychiatric hospital, and

WHEREAS, a person may only be admitted to an ESF if the person has a mental disorder, chemical dependency disorder, or both; an organic or traumatic brain injury; or a cognitive impairment that results in symptoms or behaviors requiring supervision and facility services, and

WHEREAS, a person may only be admitted to an ESF if the person additionally requires daily care by or under the supervision of a mental health professional, chemical dependency professional, or nurse; or assistance with three or more activities of daily living, and

Ordinance No. 1714
Page 2 of 6

WHEREAS, a person may only be admitted to an ESF if, in addition to the previous two requirements, the person has two or more of the following: self-endangering behaviors that are frequent or difficult to manage; aggressive, threatening, or assaultive behaviors that create a risk to the health or safety of other residents or staff, or a significant risk to property and these behaviors are frequent or difficult to manage; intrusive behaviors that put residents or staff at risk; complex medication needs and those needs include psychotropic medications; a history of or likelihood of unsuccessful placements in either a licensed facility or other state facility or a history of rejected applications for admission to other licensed facilities based on the person's behaviors, history, or security needs; a history of frequent or protracted mental health hospitalizations; a history of offenses against a person or felony offenses that created substantial damage to property, and

WHEREAS, an ESF is required to maintain sufficient numbers of staff with the appropriate credentials and training to provide residents with such services as mental health treatment, chemical dependency treatment, and security as needed, and

WHEREAS, the State licenses ESF's as an entity of a different character than nursing homes; assisted living facilities; adult family homes; group training homes; and residential treatment facilities, and

WHEREAS, ESF's are a land use that is not specifically provided for in the Des Moines Zoning Code, and

WHEREAS, it is appropriate to identify Enhanced Service Facilities as a specific use type within the City Zoning Code and to designate zones in which the use may be permitted, not permitted or allowed by conditional use permit or unclassified use permit, and

WHEREAS, services offered by an ESF and the special needs of the residents make these facilities difficult to site similar to in-patient facilities, mental health facilities, group homes, and secure community transition facilities, and

Ordinance No. 1714
Page 3 of 6

WHEREAS, these characteristics make it appropriate for the City of Des Moines to identify Enhanced Services Facilities as Essential Public Facilities, and

WHEREAS, in accordance with RCW 35A.63.220, interim zoning controls may be effective for no longer than six months, but may be effective for up to a year if a work plan is developed for related studies providing for such a longer period, and

WHEREAS, the City Council finds that the amendments contained in this Ordinance are appropriate and necessary for the preservation of the public health and welfare, and to provide for the siting of Enhanced Services Facilities within the City, and

WHEREAS, the City Council further finds that passage of this Ordinance constitutes an emergency; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. Findings. RCW 35A.63.220 and RCW 36.70A.390 authorize adoption of interim zoning measures with certain limitations. In compliance with the requirements of these statutes and applicable case law authority, the City Council adopts as findings the pronouncements contained in the above recital provisions.

Sec. 2. Interim regulation adopted. DMMC 18.52.010B and section 133 of Ordinance No. 1591 as amended by section 12 of Ordinance No. 1601 as amended by section 8 of Ordinance No. 1618-A as amended by section 2 of Ordinance No. 1644 as amended by section 1 of Ordinance No. 1645 as amended by section 8 of Ordinance No. 1655 as amended by section 4 of Ordinance No. 1656 as amended by section 2 of Ordinance No. 1661 as amended by section 2 of Ordinance No. 1669 as amended by section 1 of Ordinance No. 1672 as amended by section 3 of Ordinance No. 1697 is amended to add the following use as follows:

//
//
//
//

Ordinance No. 1714

Page 4 of 6

Use is: P: Permitted P/L: Permitted, but with special limitations CUP: Conditional use review required UUP: Unclassified use review required	NC	I-C	B-P	C-C	D-C	H-C	PR-C	T-C	W-C
Enhanced Services Facilities							UUP /L[84, 85]		
Essential public facilities not otherwise listed						UUP /L[84, 85]	UUP /L[84, 85]		
Hospitals, Mental							UUP /L[84, 85]		

Sec. 3. Interim definition added. DMMC 18.01.050 and section 5 of Ordinance No. 1591 as amended by section 1 of Ordinance No. 1628 as amended by section 1 of Ordinance No. 1655 as amended by section 1 of Ordinance No. 1661 as amended by section 3 of Ordinance No. 1669 as amended by section 15 of Ordinance No. 1671 as amended by section 1 of Ordinance No. 1697 are amended to add or revise the following definitions:

"Enhanced services facility" means a facility licensed by the Washington State Department of Social and Health Services under chapter 70.97 RCW.

"Essential public facilities (EPF)" include those facilities that are typically difficult to site, as defined in RCW 36.70A.200 and WAC 365-196-560, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, regional transit authority facilities as

Ordinance No. 1714
Page 5 of 6

defined in RCW 81.112.020, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, enhanced services facilities, and secure community transition facilities as defined in RCW 71.09.020.

~~"Mental hospital" means an institution licensed by state agencies under the provisions of law to offer facilities, care and treatment for cases of mental and nervous disorders, and alcoholics. Establishments limiting services to juveniles below the age of five years, and establishments housing and caring for cases of cerebral palsy are not considered mental hospitals.~~

"Nursing home" means a facility licensed by the Washington State Department of Social and Health Services under chapter 18.51 RCW.

Sec. 4. Public hearing on interim zoning control.

Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the City Council shall hold a public hearing on this interim control regulation within sixty (60) days of its adoption, or before May 13, 2019. The Council shall hold this hearing on May 9, 2019. Immediately after the public hearing, the City Council shall adopt findings of fact on the subject of this interim control regulation and either justify its continued imposition or rescind the regulation.

Sec. 5. Declaration of emergency. The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council, and that the same is not subject to a referendum (RCW 35A.12.130). Without an immediately effective interim zoning regulation, applicants for such projects or uses could become vested, leading to development that could be incompatible with the regulations adopted in this interim control and which may eventually be adopted by the City. Therefore, the interim regulation in this Ordinance must be imposed as an emergency measure to protect the public health, safety and welfare, and to prevent the submission of applications to the City in an attempt to vest rights for an indefinite period of time. This Ordinance does not affect any existing vested rights.

Ordinance No. 1714
Page 6 of 6

Sec. 6. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

(2) If the provisions of this Ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this Ordinance is deemed to control.

Sec. 7. Effective date. This Ordinance shall take effect and be in full force immediately upon adoption, as long as it is approved by a majority plus one of the entire membership of the Council, as required by RCW 35A.12.130.

PASSED BY a majority plus one of the whole membership of the City Council of the City of Des Moines this March 14, 2019 and signed in authentication thereof this March 14, 2019.


M A Y O R

APPROVED AS TO FORM:


City Attorney

ATTEST:


City Clerk

Published: 3/21, 2019

Effective Date: Immediately Upon Adoption

Susan Cezar

From: sally moncrieff <spaaso@yahoo.com>
Sent: Thursday, May 9, 2019 3:04 PM
To: Tim George
Cc: Susan Cezar; Michael Matthias
Subject: Re: Response to Email = RE: Comments on Draft ORdinance No. 19-048

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Mr George,
Thank you for responding to my email.
A neighbor told me that Council would be voting on allowing an ESF to be sited downtown.

I went online and read the Council agenda and then the Council packet. I found the agenda lacking in details so then went to the packet and then to the Comprehensive Plan.

My understanding from the packet and Comp Plan is that the vote is to amend the Comp Plan to create a new definition for ESF and I also understood the vote to be to allow ESF in the downtown zone.

I do find the language in the packet very difficult to interpret and I also found the Comp Plan language difficult to interpret.

All of my information was off of the city web site.

My neighbors are under the same impression as I am and also complain that it's difficult to interpret what the Public Hearing is meant to accomplish and what the result of the motions would be.

I'm very happy to hear that ESF will not be allowed in the Downtown zone.

I assume then that ESF would be categorized with Public Institutions and be zoned as those uses are.

Thank you again for taking the time to correct my misunderstanding

Sally Moncrieff

Sent from my iPhone

On May 9, 2019, at 10:36 AM, Tim George <TGeorge@desmoineswa.gov> wrote:

Good morning Ms. Moncrieff,

In response to your email below, I wanted to provide clarification. The Draft Ordinance being considered tonight, if passed, would prohibit Essential Services Facility's (ESF) in the Downtown Marina District (D-C zone). Essentially, the ordinance would do the opposite of what you stated below. The ordinance would confirm that an ESF is **not** an allowed use in the Downtown.

If you don't mind sharing where you found the information related to the draft ordinance, we'd like to have the opportunity to correct the record if there is mis-information out there.

Here is a link to the packet for tonight's public hearing, if you would like to review the ordinance and related

materials: http://www.desmoinesmail.com/WebPDF/Council/Packet_Archive/2019/050919.pdf

Thank you for taking the time to comment.

Tim George
City Attorney

From: sally moncrieff <spaaso@yahoo.com>

Date: May 8, 2019 at 8:39:21 PM PDT

To: "lbangs@desmoineswa.gov" <lbangs@desmoineswa.gov>

Subject: Public Hearing to consider Draft Ordinance No 19-048 - Please decline or move to pass to a second reading on June 27

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Councilor Bangs,

I respectfully request that you DO NOT vote to amend the DMMC tonight. I am writing to request that you either decline to enact draft ordinance 19-048 or move to pass the draft ordinance to a 2nd reading on June 27, 2019.

I am alarmed that draft ordinance No. 19-048 would amend the DMMC use table to allow a private for-profit EPF to be sited downtown - a zone in which the existing DMMC does not allow such a facility to be located. Allowing EPF facilities in the downtown commercial district would create a non-conforming use. The Noble Health Care EPF does not share the characteristics of a traditional nursing facility which is why Burien fought to prevent Noble Health Care from moving into that city.

I attempted to find information on Noble Health Care and Zack Wester and found a Noble Health Care Center in Cashmere, WA that has a below average rating with 10 Substantiated Complaints, 1 Fine and 1 Penalty. I couldn't find any information on Mr Wester on line which is worrisome. Hopefully the Council has received substantiated references on both Noble Health Care and on Mr. Wester.

The DMMC Land Use Goal 1 is to actively guide and manage growth in a way that:

-Preserves and enhances the quality of life and the diverse residential neighborhoods of the community **and serves them with vibrant business districts.**

-Promotes economic development.

The DMMC meets all State Growth Requirements and does not need amending without a much more transparent public discussion.

Please decline Draft Ordinance No. 19-048. If you cannot agree with declining, then please move to pass the draft to a second reading on June 27, 2019 so that your constituents have the opportunity to comment on amending their official policy guide.

Thank you for your service to our beautiful city.

Respectfully,
Sally Moncrieff
720 S 231st St
Des Moines, WA 9819

Susan Cezar

From: Bonnie Wilkins
Sent: Wednesday, May 8, 2019 1:28 PM
To: 'Doreen Harper'; _CityCouncil
Subject: RE: EPF & ESF Hearing

Hi Doreen,

Your email has been received and will be forwarded to staff.

Thank you,
 Bonnie

Bonnie Wilkins, CMC | City Clerk-Communications Director City of Des Moines | 21630 11th Avenue S, Suite A | Des Moines WA 98198
 206.870.6519 | 206.870.6540 (fax)

CONFIDENTIALITY STATEMENT: The information contained in this electronic communication may be personal, privileged and/or confidential information intended only for the use of the individual(s) or entity(ies) to which it has been addressed. If you read this communication and are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication, other than delivery to the intended recipient is strictly prohibited. If you have received this communication in error, please immediately notify the sender by reply e-mail. Thank you.

-----Original Message-----

From: Doreen Harper [mailto:woodmontcac1@yahoo.com]
Sent: Wednesday, May 8, 2019 12:19 PM
To: _CityCouncil <CityCouncil@desmoineswa.gov>
Subject: EPF & ESF Hearing

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear Des Moines City Council,

I am writing with regard to the siting of Enhanced Services Facilities (ESF's) for purposes of public record for the hearing to be held on May 9, 2019.

Although these services are in dire need, this is solely about location. As a community, we have visited this topic in depth and to great length when we were facing the Woodmont Recovery mega-facility being sited near an elementary school. The community let their voices be heard about where to site these services in order to limit the impacts on the residents and members of the city.

The downtown business core of Des Moines is not a healthy location for people who are self-endangering, aggressive, threatening or have assaultive behaviors. If they are a risk to property, other residents and staff, then they are a risk to the community at large. Wise placement and well-thought out amenities for their treatment and support cannot be found in the downtown business district.

As a resident of Des Moines, I support the City Council's decision to amend the zoning to address the siting of these facilities. I also want to mention that the City of Des Moines has performed its duty as a host to multiple Essential Public Facilities including but not limited to being a direct neighbor to SeaTac Airport and a large regional correctional facility. Siting a high-risk nursing home and aggressive population care facility in a residential community with children, parks, small businesses, and including a high percentage of elderly citizens would be a catastrophic decision. The risks are too high and safety of the citizens should be the paramount concern over the drive to accommodate a high-risk facility with dangerous impacts and unforeseen outcomes.

The PR-C zone is more suited to address the needs of this facility where there are multiple modes of transportation and accessibility to health related services to address their needs and care.

Sincerely,
Doreen Harper
Des Moines Resident

Susan Cezar

From: Bonnie Wilkins
Sent: Wednesday, May 1, 2019 2:07 PM
To: Susan Cezar
Subject: FW: Recent change to nursing home zoning
Attachments: ESF Description for Zoning.docx
Importance: High

From: Bonnie Wilkins
Sent: Friday, March 22, 2019 9:16 AM
To: 'zackw@noble-hc.com' <zackw@noble-hc.com>
Subject: FW: Recent change to nursing home zoning
Importance: High

Mr. Wester,

The Des Moines City Council has received your comments relative to the recent change to nursing home zoning.

This item is currently on the May 9th City Council Agenda and we invite you to come to that meeting to speak during the Public Hearing portion of the meeting.

If you have any questions please do not hesitate to contact me.

Thank you and have a wonderful weekend!
 Bonnie

Bonnie Wilkins, CMC | City Clerk-Communications Director
 City of Des Moines | 21630 11th Avenue S, Suite A | Des Moines WA 98198
 206.870.6519 | 206.870.6540 (fax)



CONFIDENTIALITY STATEMENT: The information contained in this electronic communication may be personal, privileged and/or confidential information intended only for the use of the individual(s) or entity(ies) to which it has been addressed. If you read this communication and are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication, other than delivery to the intended recipient is strictly prohibited. If you have received this communication in error, please immediately notify the sender by reply e-mail. Thank you.

From: Zachary Wester [mailto:zackw@noble-hc.com]
Sent: Wednesday, March 20, 2019 3:52 PM
Subject: Fwd: Recent change to nursing home zoning

Hello,

As the decision to declare an emergency and enact the recent interim regulations took place without any notification to or input from the interested parties, I wanted to make sure the information you're operating under is complete.

We approached the city planning team in January about siting an ESF in the D-C zone. Initially, after speaking with ESF licensing officials from DSHS and reviewing statute, the planning department informed us that they thought it was a permitted use, but then changed that opinion. They decided that, based on the type of clientele served, an ESF was an essential public facility, and so, not permitted. When presented with information to the contrary they told us to pursue an interpretation to code, something we now realize was a stalling tactic to allow interim rules to be put into place before our full application could be processed.

I'm attaching the information that the planning department was provided. Below is a summary:

These facilities are designed to take people that have completed treatment in a mental hospital, and give them the support they need to get back into the community. Not to be relegated to a facility in the industrial zone of the city. Yes, we picked a nice part of town. We picked it for the same reasons anyone would want to live there. Everyone looks at the admission criteria of these individuals (self-endangering behavior, history of failed placement, mental illness, etc.) and misses one key component: HISTORY OF. They have completed acute treatment, they have found a treatment plan that has allowed them to be safe and functional for some time, otherwise they CANNOT come to an ESF. The regulations are very clear that an ESF can only admit an individual that *"does not endanger the safety, of other residents and members of the community."* An ESF is designed to help them maintain that function and be back in the community.

An ESF is NOT a mental health facility. No one can be civilly committed to an ESF. It is not an evaluation and treatment facility as other EPFs. Its a nursing home designed to meet residents' medical AND mental health needs.

The Downtown-Commercial Zoning code list(ed) "Nursing homes (PR-R-Nursing care facility; IC-Nursing and residential care facility) as a permitted primary use. The city code 18.01 DMMC defines 'Nursing Homes' as: *"Facilities for patients who are recovering from an illness, or receiving care for chronic conditions, mental or physical disabilities, terminal illness, alcohol or drug inpatient treatment. Care may include inpatient administration of medicine, preparation of special diets, bedside nursing care, and treatment by a physician or psychiatrist."*

We feel like an ESF fits this definition and should be a permitted use for a number of reasons:

1. An ESF is a residential care facility
 1. It is licensed and regulated by DSHS Residential Care Services. RCS licenses all residential facilities (Nursing Homes, ALF, AFH, ESF, etc.)
 2. An ESF is funded by a mechanism (CMS 1915(c) waiver) that is specifically designed and limited to providing **in home or community based** long-term care services and supports, rather than in an institutional setting. ALF and AFH use this waiver to provide mental health care under contracts as well. The nursing home ECS program are funded through similar waivers as well.
 3. An ESF is subject to the same building code as a nursing home, assisted living facility, or adult family home depending on resident population level of independence WAC 388-107-0700. The proposed ESF will conform to the licensed nursing home building code.
2. An ESF's scope of services fit the definition offered in DMMC 18.01
 1. WAC 388-106-0336 describes the scope of care for ESF and ALF operating under a 1915c waiver. They are identical other than an ESF more specific staffing requirements.
 2. No service provided in an ESF, the licensing mechanism, or construction requirement for an ESF is beyond the scope of the DMMC definition of nursing home, or in disharmony with it.

It's worth noting that the DMMC zoning definitions do not include a stand alone definition of, or mention of, an assisted living facility or residential care facility. The intention seems to be for Nursing Home definition to apply across multiple residential care facility licensing types. This is further evidenced by the listing of residential care facility within parenthesis of the "Nursing homes (PR-R-Nursing care facility; IC-Nursing and residential care facility)" description of a permitted primary use. A stand-alone definition of an Adult-Family Home does exist in code. None exists for assisted living facility. So the interim rules effectively outlawed any assisted living in the city due to the RCW referenced in the new rule.

Also so you know, there are number of contracts, using the same funding as an ESF, that provide extra resources to any nursing home or assisted living facility to take in and care for the exact same population, with the same medical histories. Are they also not permitted to provide care to these individuals?

I'm presenting this information so you can hopefully make a more informed decision. If you would like to have a more extensive conversation please feel free to give me a call.

Thank you,

Zack Wester

--
Zack Wester
Noble Health Care
M: 702-854-0159

Request for Interpretation: 22220 Marine View Drive Des Moines, WA 98198

Description of Request:

Our request for interpretation is to ensure that an Enhanced Service Facility (ESF), as a Residential Care Facility providing 24-hour nursing care to individuals with chronic mental and in some cases physical disabilities, fits the Nursing Homes (IC-Nursing and Residential Care Facility) definition in 18.01 DMMCA. It is the intention of Noble Healthcare to site an ESF at 22220 Marine View Drive in Des Moines, WA, a property located in the Des Moines Downtown-Commercial zoning district (D-C). Table 18.52.010B designates Nursing Homes (PR-R-Nursing care facility; IC-Nursing and residential care facility) as a permitted use in the D-C district. Nursing Homes (IC-Nursing and Residential Care Facility) are defined in 18.01 DMMCA.

Narrative Description of Project:

It is Noble Healthcare's intent to convert the building at 22220 Marine View Drive into a 16-bed Enhanced Services Facility (ESF). An ESF is a residential facility that provides 24-hour nursing care to individuals with varying physical, mental and behavioral health needs. Care may include inpatient administration of medicine, preparation of special diets, bedside nursing care, and treatment by a physician or psychiatrist and other mental health professionals. These individuals will have completed evaluation and treatment at a State Hospital or other Mental Health Institution, and have been deemed ready for discharge to a lower level of care. The facility decides which individuals to admit by assessing individuals DSHS has found stable and no longer in need of acute inpatient care. The facility may only admit referred individuals whom it determines are able to adequately have care needs met by the facility and without endangering the safety of other residents and members of the community.

Historically, individuals discharged from State Hospitals or other mental health institutions transitioned to nursing homes, assisted living facilities, adult family homes, or received support services in some other community setting. With few of these facilities specializing in mental or behavioral health, and few willing to admit these types of individuals, community discharge options have been, and continue to be, scarce. An ESF is one of several programs meant to provide the same bedside nursing, medication assistance, and basic life services as a traditional nursing home with the addition of specialized training, support and resources specific to those with mental health needs. It is meant to be a residential setting that is well equipped to provide someone discharging from an institutional setting with the support they need to maintain the highest level of function possible; the same mandate given to all long-term care facilities.

An ESF provides 24-hour nursing care, and, operationally is very similar to a nursing home or assisted living facility, though with a much higher expertise and focus on mental and behavioral health support. The type and level of care provided to a resident is driven by individual need; the aim is to provide a residential setting equipped to facilitate aging-in-place. The small scale and high staffing ratios of the proposed ESF are designed to foster the most individualized care possible. Residents live in private rooms and have basic needs like meals, housekeeping, and laundry services provided in the facility. Just as in other residential care settings (Nursing Homes, Assisted Living Facilities) bedside nursing care and assistance with personal care and

mobility is provided by nursing assistants, and at a level appropriate for the individual. In addition to nursing services, a mental health professional (licensed mental health counselor, licensed marriage and family therapist, licensed independent clinical social worker, licensed advanced social worker, licensed psychologist or psychiatrist), is on site 8-hours per day to support individual residents, and take part in care-planning. Staff provided support includes assistance with arranging and accompanying residents on medical and other off-site appointments as necessary.

An ESF is meant to support resident activity in the community. The small scale and high staffing levels of an ESF are intentional. This is to provide residents with a level of support that enables them to take part in meaningful activities inside and outside of the facility. This is one reason why the Marine View Drive location is so promising. Its walkability, shopping, dining, and access to public transit make it an ideal location. We envision daily outings coupled with constant activities inside the facility. We would work to actively cultivate partnerships in the surrounding community to provide opportunities for residents to interact with the community.

It is important to understand that an ESF, as a licensed residential facility, provides care on a voluntary basis. Just as with a traditional nursing home or assisted living facility, residents are not civilly committed or detained as they may be to a state hospital or mental health facility licensed under RCW 71 or 72. This is because the the mental health and behavioral challenges of an ESF resident do not rise to a level that requires an institutional setting.

Technical Description:

The information below is an effort to further clarify 1)What an Enhanced Service Facility is (ESF), 2) How Washington DSHS licenses and funds ESFs, 3) What Services are provided by an ESF, 4) The staffing model of an ESF, 5) Capacity of an ESF and 6) Zoning Considerations

1. **ESF DESCRIPTION** - An Enhanced Service Facility is a 24-hour residential facility that provides treatment and services to persons for whom acute inpatient treatment is **not** medically necessary, and who have been determined by DSHS to be inappropriate for placement in other licensed facilities due to complex mental and behavioral health needs. RCW 70.97.010

The Washington State Legislature authorized DSHS to develop Enhanced Services Facilities (ESFs) under Chapter 70.97 RCW. This new category of licensed residential facility provides a community placement option for individuals whose complicated personal care, mental health and behavioral challenges do not rise to a level that requires an institutional setting. Individuals are referred to an ESF if they are coming out of state and community psychiatric hospitals after having completed treatment, or have no other placement option due to their complex behavior, medical, chemical dependency and/or mental health needs.

2. **ESF LICENSING & FUNDING** - An Enhanced Service Facility is licensed by Washington DSHS Residential Care Services (RCS). RCS is responsible for the licensing and

oversight of all residential care settings. Residential care settings include: adult family homes, assisted living facilities, nursing facilities, intermediate care facilities for individuals with intellectual disabilities, Enhanced Service Facilities, and certified community residential services and supports.

From the perspective of WA State Dept of Health Construction Review, an ESF is categorized as one of three types described in WAC 388-107-0700: 1) a nursing home, 2) an assisted living facility, or 3) an adult family home. The category is determined by resident admission practices, specifically:

(2) The enhanced service facility building occupancy type will be consistent with resident admission practices and state adopted building codes for licensed (1) nursing homes, (2) assisted living facilities or (3) adult family homes. This determination will be based on the following categories:

(a) Enhanced service facility category 1: Admit resident(s) physically or cognitively incapable of self preservation (enhanced services facility-nursing home type);

(b) Enhanced service facility category 2: Admit resident(s) capable of self-preservation with physical assistance from another person (enhanced services facility-assisted living type); or

(c) Enhanced service facility category 3: Admit no more than six resident(s) capable of evacuating the facility within five minutes (enhanced services facility-adult family home type).

It is the intention for the proposed site to be licensed as category 1: nursing home type.

Resident care and services in an ESF are funded by a 1915(c) waiver from the Centers for Medicare and Medicaid Services (CMS). The intent of the federal waiver for Home and Community-Based Services (HCBS) is to ensure that individuals can receive long-term care services and supports in home or in the community, rather than in an institutional setting. Individuals being served by these programs have full access to the benefits of community living settings, in addition to having the opportunity to receive services in the most integrated setting possible. Under HCBS requirements and 1915(c) funding, licensed Adult Family Homes, Assisted Living Facilities, Nursing Homes and Enhanced Services Facilities are able to bolster their ability to provide resources and support to individuals with behavioral and mental health care needs that a other residential care facilities of the same licensure would otherwise find challenging. CMS waiver services cannot be provided in an institutional setting, only in a residential care setting.

3. **SERVICES OFFERED** - An ESF's services are tailored to each individual's needs. A scope of services is described in WAC 388-106 (Long-term Care) and service regulatory framework is outlined WAC 388-107 (Licensing Requirements For Enhanced Service

Facilities). WAC 388-107-0550 describes 'basic services' to be provided as Housekeeping, Food Services, and Laundry. WAC 388-107-0210 further describes Care and Services as:

The enhanced services facility must develop and implement a program to meet the needs of each resident and to ensure each resident receives:

- (1) The care and services identified in the resident's person-centered service plan;*
- (2) The necessary care and services to help the resident reach the highest level of physical, mental, and psychosocial well-being consistent with resident choice, current functional status, and potential for improvement or decline;*
- (3) Services by the appropriate professionals based upon the resident's assessment and person-centered service plan; and*
- (4) The care and services in a manner and in an environment that:*
 - (a) Actively supports, maintains or improves the resident's quality of life;*
 - (b) Actively supports the resident's safety; and*
 - (c) Reasonably accommodates the resident's individual needs and preferences except when the accommodation endangers the health or safety of the resident, another resident, or a member of the community.*

As described above, the type and level of care provided to a resident is driven by the resident's 'person-centered service plan.' The person-centered service plan is developed and updated by the 'Person-centered service planning team.' As described in WAC 388-107-0100 the service planning team includes the resident and/or their representative, the ESF's nursing staff, a mental health professional, a DSHS case manager, and any other persons as needed.

In developing a service plan, the team utilizes the client's Comprehensive Assessment Reporting Evaluation or CARE. The CARE is an assessment described in WAC 388-106-0075. The CARE is used to determine the level of care and services needed by a Medicaid client receiving or applying to receive long-term care or services in a residential setting (adult family homes, assisted living facilities, nursing facilities, intermediate care facilities for individuals with intellectual disabilities, Enhanced Service Facilities, and certified community residential services and supports) throughout the State of Washington. WAC 388-107-0070 outlines criteria to be included in a comprehensive assessment for an ESF client that is in addition to the CARE:

The enhanced services facility must obtain sufficient information to be able to assess the capabilities, needs, and preferences for each resident, and must complete a comprehensive assessment. The assessment addresses the following, within fourteen days of the resident's move-in date:

- (1) Individual's recent medical history, including, but not limited to:*
 - (a) Diagnoses from a licensed medical or health professional, unless the resident objects for religious reasons;*
 - (b) Chronic, current, and potential skin conditions; or*

- (c) Known allergies to foods or medications; or
- (d) Other considerations for providing care or services.
- (2) Currently necessary and contraindicated medications and treatments for the individual, including any prescribed medications, over-the-counter medications, and antipsychotic medications.
- (3) The individual's nursing needs.
- (4) Significant known challenging behaviors or symptoms of the individual causing concern or requiring special care, including:
 - (a) History of substance abuse;
 - (b) History of harming self, others, or property;
 - (c) Other conditions that require behavioral intervention strategies;
 - (d) Individual's ability to leave the enhanced services facility unsupervised;
 - (e) Any court order or court stipulation regarding activities, surroundings, behaviors, and treatments; and
 - (f) Other safety considerations that may pose a danger to the individual or others, such as use of medical devices or the individual's ability to smoke unsupervised, if smoking is permitted outdoors in a specific location on the premises.
- (5) Individual's special needs, by evaluating available information, or if available information does not indicate the presence of special needs, selecting and using an appropriate tool to determine the presence of symptoms consistent with, and implications for, care and services of:
 - (a) Mental illness, or needs for psychological or mental health services;
 - (b) Developmental disability;
 - (c) Dementia. While screening a resident for dementia, the enhanced services facility must:
 - (i) Base any determination that the resident has short-term memory loss upon objective evidence; and
 - (ii) Document the evidence in the resident's record.
 - (d) Other conditions affecting cognition, such as traumatic brain injury or other neurological conditions.
- (6) Individual's activities, typical daily routines, habits and service preferences.
- (7) Individual's personal identity and lifestyle, to the extent the individual is willing to share the information, and the manner in which they are expressed, including preferences regarding food, community contacts, hobbies, spiritual preferences, or other sources of pleasure and comfort.
- (8) Who has decision-making authority for the individual, including:
 - (a) The presence of any advance directive or other legal document that will establish a substitute decision maker in the future;
 - (b) The presence of any legal document that establishes a current substitute decision maker or court orders for treatment, or documents indicating resident is under the supervision and care of the department of corrections; and

(c) The scope of decision-making authority of any substitute decision maker.

(9) A plan to use antipsychotic medications as prescribed and documented in the clinical record in accordance with chapters 71.05 and 70.97 RCW.

(10) If the resident is a medicaid client the assessment must include elements of the CARE assessment.

Based on the needs identified in the Comprehensive assessment, a person-centered service plan may include varying levels of inpatient administration of medicine, preparation of special diets, bedside nursing care, and treatment by a physician, psychiatrist, or other mental health professional, and support for participation in activity programs inside and outside the facility.

As is the case with other licensed residential facility types (nursing homes and assisted living facilities), the facility ultimately decides if an individual's needs are able to be met by the facility, and if the individual will be admitted. WAC 388-107-0300 states:

The enhanced services facility must only admit or continue to provide services to a resident when:

(1) The department has determined that the individual is eligible for placement in an enhanced services facility.

(2) The facility can safely and appropriately meet the assessed needs and preferences of the resident:

(a) With available staff; and

(b) Through reasonable accommodation.

(3) Admitting the resident does not negatively affect the ability of the facility to:

(a) Meet the needs, and does not endanger the safety, of other residents and members of the community; or

(b) Safely evacuate all people in the facility during an emergency according to the approved fire safety and evacuation plans appropriate to the occupancy type of the building.

WAC 388-106 provides an additional scope of services that an individual receives in a facility operating under the residential support waiver and WAC 388-106-0336 (3), specifically outlines ESF services. They include:

(3) Enhanced services facilities that will provide:

a. Personal care - This generally means appropriate level of assistance with Activities of Daily Living (ie bathing, bed mobility, dressing, eating, locomotion, personal hygiene, etc.)

b. Supportive services; - This can include assistance and support with managing things like personal finances, transportation to medical appointments, full meal service, laundry, etc.

- c. *Supervision in the home and community;*
- d. *Twenty-four hour on-site staff;*
- e. *The development and implementation of an individualized behavior support plan to prevent and respond to crises;*
- f. *Medication management; and*
- g. *On-site staffing ratios and professional staffing as described in WAC 388-107-0230 through WAC388-107-0270*

4. **STAFFING** - WAC 388-107-0230 through WAC388-107-0270 - establishes the staffing requirements for an ESF. These include:

- a. 24-hour licensed nurse support on site (at least 20 hours per week of which must be a Registered Nurse),
- b. A mental health professional (typically a social worker, mental health counselor, or psychologist) on duty in the facility at least 8-hours per day, and
- c. A staffing ratio of 1 staff to 4 residents, 24 hours per day (must be nursing assistant, licensed nurse, or mental health professional).

In addition to the required clinical staff outlined above, support staff including housekeepers, physical plant maintenance, and administrative staff will be on site.

5. **CAPACITY** - An ESF is permitted to license no more than 16-beds per facility. The intent is for this ESF, located at 22220 Marine Drive, to be licensed for the maximum 16-beds. This means there would be 16 private bedrooms in the facility to care for a maximum of 16 residents. Bathrooms, dining areas, sittings rooms, etc are all common. An ESF of this size would likely have 4 full bathrooms, 1 kitchen, 1 dining room and a couple of sitting rooms.

6. **ZONING CONSIDERATIONS** - The Downtown-Commercial Zoning code lists "Nursing homes (PR-R-Nursing care facility; IC-Nursing and residential care facility) as a permitted primary use. The city code 18.01 DMMC defines 'Nursing Homes' as:

"Facilities for patients who are recovering from an illness, or receiving care for chronic conditions, mental or physical disabilities, terminal illness, alcohol or drug inpatient treatment. Care may include inpatient administration of medicine, preparation of special diets, bedside nursing care, and treatment by a physician or psychiatrist."

As is outlined above in the description of services and admission criteria, the definition in DMMC 18.01 is an apt description of the services provided by an ESF, the clients served, as well as the setting itself as a residential care facility. No service provided in an ESF, admission criteria, the licensing mechanism, or construction requirement for an ESF is beyond the scope of the DMMC definition of nursing home, or in disharmony with it.

To reiterate, an ESF is the same residential facility type as nursing homes and assisted living facilities as evidenced by the following:

1. An ESF is licensed and regulated by DSHS Residential Care Services (just as all other residential care settings including nursing homes and assisted living facilities in the state)
2. An ESF uses the same resident evaluation tool (CARE) as all other residential care facilities (including nursing homes and assisted living facilities) to drive a plan of care and service level. This tool was developed by DSHS Aging and Long-Term Support Administration to document a client's functional ability, determine eligibility for long-term care services, evaluate what and how much assistance a client will receive, and develop a plan of care.
3. An ESF is only permitted to admit residents deemed no longer in need of acute inpatient medical and/or mental health care, and is not permitted, licensed, or equipped to provide acute inpatient care as a hospital, acute mental health facility, or other such institution would
4. An ESF is not a placement option for detained or civilly committed individuals
5. An ESF offers a scope of services (as described in WAC 388-106-0336) identical to other long-term residential care settings, including assisted living facilities, only with more specific staffing requirements
6. An ESF is funded by a mechanism (CMS 1915(c) waiver) that is specifically designed and limited to providing **in home or community based** long-term care services and supports, rather than in an institutional setting.
7. An ESF is subject to the same building code requirements as a nursing home, assisted living facility, or adult family home depending on resident population level of independence WAC 388-107-0700. The proposed ESF will conform the licensed nursing home building code.

In an email dated February 5, 2019, Des Moines Community Development staff stated, *"This type of facility would be considered a mental health facility due to the information provided in Chapter 70.97.030 RCW which calls out specific criteria for admission to an ESF. . . To be clear, the proposed facility is not permitted at the desired location within the D-C zone."*

In response, using admission criteria (medical history, diagnoses, disability type and status, etc.) is an improper approach to classifying a facility and would be considered a discriminatory practice. It is our understanding that RCW 35.63.220 prohibits a city from *"enact(ing) or maintain(ing) an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps (42 U.S.C. Sec. 3602) differently than a similar residential structure."* An ESF is clearly a similar structure to a nursing home both in building code and scope of service. There is a good deal of related case-law citing RCW 35.63.220, the Fair Housing Act of 1968, and more generally the 14th amendment, that

rules against using medical history, medical diagnoses, disability, or other admission criteria, in zoning decisions for residential facilities.

Residential care facilities should not be treated differently based on the chronic conditions they treat. Many nursing homes, assisted living facilities, adult family homes, and ESFs, specialize in providing care for certain conditions (i.e. dementia care, TBI care, memory-care, hip-knee rehab, respiratory conditions, bariatric care, post-stroke care, etc). There are nursing homes (Skilled Nursing Facility and Assisted Living Facility) operating in Des Moines currently that could elect to take part in Expanded Community Service contracts which carry admission criteria and goals very similar to an ESF, namely accepting stabilized residents from state hospitals. Just as their decision to take part in such contracts, would not put them outside the definition of nursing home in DMMC 18.01, neither should an ESF's service to that population cause it to fall out of the definition.

In further response to the email cited above, in the city code, Chapter 18.01, Mental Health Facilities are listed under Essential Public Facilities (EPF). Residential Care Services (RCS), the licensing and regulatory authority responsible for ESF, does not license Mental Health Facilities. As RCS does not license Mental Health Facilities, an ESF should not be considered one. Mental Health Facilities cited in RCW refers to Evaluation and Treatment Institutions as licensed in RCW 71 and 72. An ESF, as a residential facility and not an institutional setting, does not fit this definition. As described above, an ESF serves a population whose mental and behavioral health needs are not appropriate for an inpatient institution. In fact, WAC 388-107-0001, which is the WAC establishing and specific to ESFs, clearly says that an ESF *"is **not** an evaluation and treatment facility certified under chapter 71.05 RCW,"* an ESF is licensed under the authority of RCW 70.97.

In an email dated February 15, 2019, Des Moines Community Development staff stated, *"An ESF is regulated under WAC 388-107, not WAC 388-106 which is irrelevant to an ESF."* WAC 388-106 is cited because it relates to Long-term care. ESF are required by statute to use assessment tools from chapter 106 and ESF scope of services is specifically mentioned in 106. In these ways it is relevant to an ESF, as is Chapter 107.

Again, the definition in DMMC 18.01 of **"Nursing homes (PR-R-Nursing care facility; IC-Nursing and residential care facility)"** is a perfect description of an ESF. That being the case, this seems to clearly be a permitted primary use.

Please let us know if you have any questions on any of this.



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

Aging and Long-Term Support Administration
PO Box 45600, Olympia, WA 98504-5600

May 2, 2019

Mayor Matt Pina and the Des Moines City Council
City of Des Moines
21630 11th Ave. S.
Des Moines, WA 98198

Dear Mayor Pina & City Council Members,

It has come to my attention that on May 9, 2019, the City of Des Moines will consider Draft Ordinance 19-048 that may result in effectively precluding the siting of Enhanced Services Facilities (ESFs) within the city. I am writing to provide information about ESFs to assist the City in making an informed decision regarding enacting development regulations.

An ESF is a small, community-based residential setting for up to 16 individuals who have complex personal care and behavioral health needs. These individuals require additional support and services from trained caregivers and professional staff, but do not require admission into an institutional setting or mental health treatment facility. The footprint and neighborhood impact of an ESF is similar to an Adult Family Home, a Group Home, an Assisted Living Facility, or a small Nursing Home, yet the City's zoning regulations do not limit these facilities to only one commercial zone.

There are four ESFs currently licensed and operating within the state, each of which is in a residential or mixed-use area of its respective community:

- Upriver Place ESF is an 8-bed facility in the Spokane Valley
- Orchards Highlands ESF is a 12-bed facility in Vancouver
- Unified Residential ESF is a 16-bed facility in the Spokane Valley
- Everett ESF is a 16-bed facility in Everett

ESFs are not an institutional, mental health, or a treatment facility. Nor are they a secured setting and, in fact, ESFs must be integrated into the community. The federal Centers for Medicare and Medicaid Services (CMS) have approved ESFs as a community-based residential setting as part of Washington's home and community-based long-term care system. To receive federal funding, they cannot have the characteristics of an institutional setting.

If the City adopts a permanent ordinance that prohibits ESFs except in one small commercial zone within the city and only with an unclassified use review permit, it may make the siting and operation of an ESF in Des Moines impossible.

Des Moines City Council - ESF
May 2, 2019
Page 2

The Growth Management Act prohibits cities from precluding essential public facilities and from discriminating against people based on their disabilities. A number of laws, including the Washington Housing Policy Act, the Washington Law Against Discrimination, and the Fair Housing Amendments Act likewise protect the rights of individuals with disabilities to live in their communities of choice, free of discrimination. Overly restrictive zoning ordinances may violate federal and state law.

The siting of ESFs is a priority for the state and efforts to prevent their lawful development is a matter that the Department takes seriously. We are committed to working with our community partners to accomplish our mutual goals of a robust long-term care system which provides supports to the elderly and people with disabilities in safe and healthy settings. ESFs are an important component of this system. If you have any questions, require additional information, or would like to discuss ESFs in more detail please do not hesitate to contact me.

Sincerely,



Bill Moss
Assistant Secretary

DSHS: *Transforming Lives*

Enclosure

Enhanced Services Facilities (ESFs): A New Residential Setting Type

What is an ESF?

An Enhanced Services Facility (ESF) is a small, community-based residential setting for up to 16 individuals who have complex personal care and behavioral health needs. These individuals require additional support and services from trained caregivers and professional staff, but do not require the level of care found in an institutional setting or mental health treatment facility. Additionally, ESFs receive funding through the federal Centers for Medicare and Medicaid Services (CMS) as a community-based residential setting, with state compliance monitoring and oversight.

Is an ESF an Institution, Mental Health Facility, or Treatment Center?

ESFs are not an institution, mental health or a treatment facility. ESFs are not secured and do not have any of the characteristics of an institutional setting. ESFs provide behavior support services, but do not provide any type of mental health or substance abuse treatment. If an individual needs this type of treatment or service, it is available in the community and can be accessed through the individual's medical coverage.

ESFs are part of an array of setting types available to individuals who receive assistance with personal care services through the Aging and Long-Term Support Administration (AL TSA). Personal care services include assistance with daily living tasks such as bathing, mobility, personal hygiene, eating and medication assistance. Within Washington state, individuals can receive care in a variety of settings, including:

- An individual's own home
- An Assisted Living Facility with and without intermittent nursing services
- An Adult Family Home
- An Enhanced Services Facility
- A Skilled Nursing Facility

An individual in an ESF typically receives more intensive services than what are available in an Adult Family Home or Assisted Living Facility as the staffing levels are higher. However, an individual in an ESF does not receive the intensity of medical services provided in a Skilled Nursing Facility. All individuals served by AL TSA have a choice of setting type and we honor their choices, goals and preferences for how they choose to live and interact with their community.



What are the characteristics of an ESF client?

Individuals who reside at an ESF are typically moving to an ESF from either a state hospital or a local psychiatric hospital, and their behavior support needs are such that they require more monitoring and oversight. Once the hospital determines the individual is stable and ready to transition back to the community, ALTSA begins working with the individual, the hospital, and the local behavioral health or managed care organization to develop a transition plan and assist the individual with the types of settings and providers they may select from.

Where are ESFs located?

ESFs are a type of residential setting and, as such, are located within residential communities and neighborhoods. There are four ESFs currently licensed and operating within the state, each of which is in a residential community:

- Upriver Place ESF is an 8-bed facility in the Spokane Valley
- Orchards Highlands ESF is a 12-bed facility in Vancouver
- Unified Residential ESF is a 16-bed facility in the Spokane Valley
- Everett ESF is a 16-bed facility in Everett

What are some of the Building Code requirements for an ESF?

WAC 388-107-0070 provides some of the basic building code requirements, while noting the similarities to other residential setting types:

- (1) The department of health construction review services will review the following: general, code, program submittal and minimum requirements to ensure that the facility is in compliance with enhanced services facility physical plant basic requirements.
- (2) The enhanced service facility building occupancy type will be consistent with resident admission practices and state adopted building codes for licensed (1) nursing homes, (2) assisted living facilities or (3) adult family homes. This determination will be based on the following categories:
 - (a) Enhanced service facility category 1: Admit resident(s) physically or cognitively incapable of self-preservation (enhanced services facility-nursing home type);
 - (b) Enhanced service facility category 2: Admit resident(s) capable of self-preservation with physical assistance from another person (enhanced services facility-assisted living type); or
 - (c) Enhanced service facility category 3: Admit no more than six resident(s) capable of evacuating the facility within five minutes (enhanced services facility-adult family home type).



May 8, 2019

Bill Moss
Assistant Secretary
Department of Social and Health Services
Aging and Long-Term Support Administration
PO Box 45600
Olympia, WA 98504-5600

Via e-mail

Assistant Secretary Bill Moss,

Thank you for your letter regarding Draft Ordinance No. 19-048. It has been made a part of the official comment record.

This proposed Ordinance, which will be considered for a first reading on May 9, 2019, updates and clarifies the City's Municipal Code in a number of ways that are in line with furthering the Department of Social and Health Services (DSHS) goals for the successful implementation and integration of Enhanced Service Facilities (ESF) into local communities.

First, the Ordinance clarifies that an ESF is an Essential Public Facility (EPF). This is consistent with your letter and the fact sheet that was provided with your letter. Second, it confirms that applications to site ESF's will be processed in the same manner as other EPF's. Finally it permits ESF's to be located in the largest commercial/mixed use zone in the City. This zone allows for and currently includes residential uses, and has a large number of suitable (and many vacant) parcels, great access to transportation, and various other characteristics detailed below that make it an appropriate location to provide a small, community based setting for an ESF.

The siting of ESF's in Des Moines first came to light when the City was approached in early 2019 by Josh Wester, Cale Wester and Zachary Wester of Noble Healthcare (NH) regarding the placement of an Enhanced Service Facility at 22220 Marine View Drive South in Des Moines. The proposed location was an existing commercial office building in the Downtown-Commercial (D-C) zone. The D-C zone is a commercial zone in the heart of the City's downtown business district, with little residential use. The building is located between a bank and a retail store on a main thoroughfare. It is also located within 100 yards of four separate bars/taverns.

In early February of 2019, the Wester's were told by City staff that it did not appear an ESF was a permitted use in the D-C commercial zone but that staff was willing to work with them to find another suitable location in the City where this use would be permitted. Rather than working with the City, Josh Wester declined to consider other sites.

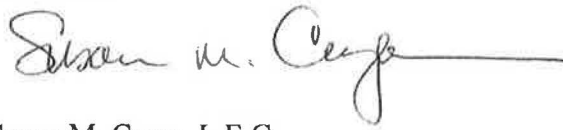
An interim zoning regulation was enacted in March of 2019 to address the fact that ESF's were not specifically identified in the City's Municipal Code. Draft Ordinance 19-048 proposes to permanently adopt these regulations.

Unlike the original commercial site that Noble Health identified for an ESF in the City's business district, the PR-C zone actually provides a mix of commercial and residential with established neighborhoods that have been identified by DSHS as being vital to the successful operation of an ESF. In fact, of all of the parcels in the zone, 41% of the parcels contain residential uses. Additionally, roughly 10% of the parcels are vacant and a number of others are likely available to be rented or purchased.

The PR-C Zone is also the City's largest commercial and mixed use zone at approximately 140 acres, and accounts for roughly 45% of all commercial/mixed use properties in the City. Finally, the PR-C Zone is similar to the locations of other existing ESF's sited in the DSHS fact sheet and has "excellent access to transportation facilities, view opportunities, and higher-density development." DMMC 18.135.030. All of these characteristics not only make the PR-C Zone a more appropriate location for an ESF, but the Zone also contains available parcels.

The City of Des Moines recognizes the need for ESF's in communities and is committed to work with DSHS to appropriately and responsibly locate these facilities in a manner that furthers our shared goals. The City Council will be considering Draft Ordinance 19-048 on Thursday May 9 but staff will be recommending that the Council not take action, but rather to pass the Draft Ordinance to a second reading at a future meeting. Prior to adoption the City would welcome further conversations with DSHS in order for the City to provide additional information on Noble Healthcare's unwillingness to explore more suitable locations or consider community/ESF resident impacts as well as to allow DSHS to provide input and/or suggested amendments to the City's Draft Ordinance.

Sincerely,



Susan M. Cezar, L.E.G.
Chief Strategic Officer/Community Development Director

CC: City Council
Representative Tina Orwall
Michael Matthias, City Manager
Dan Brewer, Chief Operations Officer
Tim George, City Attorney
Bonnie Wilkins, City Clerk



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

Aging and Long-Term Support Administration
PO Box 45600, Olympia, WA 98504-5600

June 18, 2019

Ms. Susan M. Cezar, L.E.G.
Chief Strategic Officer/Community Development Director
City of Des Moines
21630 11th Ave. S.
Des Moines, WA 98198

Dear Ms. Cezar,

I wanted to thank you and your colleagues for taking the time to meet with my staff and provide a tour of the Des Moines zoning areas. We appreciated hearing about the city's plans for future growth and development.

The Aging and Long-Term Support Administration's mission is to transform lives by promoting choice, independence and safety through innovative services. Enhanced Services Facilities (ESFs) are an important component of our long-term care system which provides supports to the elderly and people with disabilities in safe and healthy settings. While we understand the city's concerns, we believe that ESFs could also be sited in other mixed commercial and residential areas besides the Pacific Ridge-Commercial zone. We encourage the city to consider expanding the allowable zoning for ESFs in the future.

Thank you and your colleagues again for allowing us to visit and tour. Should you have any questions about ESFs, please do not hesitate to contact me at 360-725-2311.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bill Moss".

Bill Moss
Assistant Secretary

DSHS: *Transforming Lives*

THIS PAGE LEFT INTENTIONALLY BLANK

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Second Reading of Draft Ordinance No. 19-010 related to the City of Des Moines Shoreline Master Program Periodic Review and Amendment

FOR AGENDA OF: July 11, 2019

DEPT. OF ORIGIN: Community Development

DATE SUBMITTED: July 1, 2019

ATTACHMENTS:

1. Draft Ordinance No. 19-010
2. Public Comments and City Response
3. Department of Ecology Determination of Initial Concurrence
4. Proposed Amended Shoreline Master Program with Revisions
(<http://www.desmoineswa.gov/DocumentCenter/View/4577/Proposed-Amended-SMP-with-Revisions>)

CLEARANCES:

- [X] Community Development *SMA*
 [] Marina _____
 [] Parks, Recreation & Senior Services *DSS*
 [X] Public Works *PPC*

CHIEF OPERATIONS OFFICER: _____

- [X] Legal *56*
 [] Finance _____
 [] Courts _____
 [] Police _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: *mm*

Purpose and Recommendation

The purpose of this agenda item is for City Council to consider, on second reading, Draft Ordinance No. 19-010 (Attachment 1) amending the City's Shoreline Master Program (SMP) and DMMC 16.20.010. The April 11, 2019, public hearing was closed and Draft Ordinance No. 19-010 was passed to a second reading.

Suggested Motion

Motion 1: "I move to enact Draft Ordinance No. 19-010 amending the City's Shoreline Master Program and DMMC 16.20.010."

Background

In 2018 the City of Des Moines (City) embarked on a periodic review of the SMP. The SMP provides the development standards for land use within 200 feet of the Ordinary High Water Mark (OHWM) of Puget Sound. It provides a comprehensive vision, the policy framework and regulations for how the shoreline area will be used and developed over time. Approximately 115 acres of prime real estate in the City is within 200 feet of Puget Sound and regulated by the SMP. Most of the Marina and much of Redondo is included in this area.

The City's first SMP was adopted in 1972 after the Shoreline Management Act (SMA) was adopted by Washington State in 1971. The SMA is administered through a cooperative program between local governments and the Washington State Department of Ecology (Ecology), whereby local communities prepare a SMP that is adopted under guidelines established by Ecology. The City's current SMP was adopted in 2011.

Every eight years State law (Chapter 90.58 RCW and Chapter 173-26 WAC) requires that the City conduct a periodic review of the SMP and this time the City has a deadline of June 30, 2019, to complete it. Ecology provided grant funds to assist. The purpose of this SMP periodic review is:

- To ensure that the SMP complies with current State law that has been updated since the City's last SMP amendment in 2011;
- To ensure consistency of the SMP with the City's comprehensive plan and development regulations that have been updated since the City's last SMP amendment in 2011;
- To consider amendments to address changes in City policy, as directed by City Council; and
- To facilitate the submittal and review of projects by clarifying SMP content.

The City Council provided scope of work guidance and regulatory recommendations to staff at several Council Committee meetings and at a Council Regular Meeting on July 26, 2018.

The City has incorporated changes to the SMP with the goal of making it easier for residents, developers, and applicants to understand the permitting process as well as making the review of projects more efficient. A public participation plan has been implemented throughout the SMP periodic review process to provide the public an opportunity to learn about the process, review, and comment on the draft regulations. Public outreach has included a project webpage, news media press releases, social media updates, two open houses, a booth at the farmers market, and a formal public comment period and hearing.

Discussion

On April 11, 2019, City Council conducted a joint public hearing with the Department of Ecology on Draft Ordinance No. 19-010 and moved the ordinance to a second reading. Comments on the SMP periodic review were accepted until April 18, 2019. On April 22, 2019, the City sent proposed SMP amendments, public comments with the City's response (Attachment 2), and other supporting documents to the Department of Ecology for review. Ecology issued a Determination of Initial Concurrence which included suggested and required revisions on June 14, 2019 (Attachment 3).

Staff has incorporated changes into the SMP amendments in response to comments from Ecology and the public. Ecology's required and suggested changes set forth in Ecology's Determination of Initial Concurrence consist primarily of clarifications and revisions to the critical areas provisions to meet state law requirements.

The proposed amended SMP (Attachment 4) incorporates City-proposed amendments as previously reviewed by the Council, with only public and Ecology's revisions shown in track changes. There were no changes to the SMP's Appendix A - Shoreline Inventory and Characterization (not included with the attachment).

City Council may now adopt the amendments on second reading. Approval by City Council of Ordinance No. 19-010 would enact the Proposed Amended Shoreline Master Program with Revisions, which is available to view on the City's webpage at <http://www.desmoineswa.gov/smp>.

After adoption, the City will make final formatting changes and send the proposed SMP to Ecology. Ecology will provide a final letter of approval to the City within 30 days of receipt of the proposed SMP, and the new SMP will be effective 14 days after Ecology's letter of approval.

Alternatives

City Council may:

1. Enact Draft Ordinance No. 19-010 as written.
2. Enact Draft Ordinance No. 19-010 with amendments.
3. Decline to enact Draft Ordinance No. 19-010.

Periodic review of the City's SMP is a requirement of the Shoreline Management Act (Chapter 90.58 RCW) and the Growth Management Act (Chapter 36.70A RCW). A jurisdiction that has missed an update deadline may be subject to a "failure to act" petition for review to the Growth Management Hearings Board.

Financial Impact

Missing the periodic update deadline has financial consequences. A county or city that has not completed the basic actions described above by the deadline will be ineligible to receive funds from the Public Works Trust Fund or the Centennial Clean Water account or to receive preference for other state grants and loans.

Recommendation

Staff recommends that City Council enact Draft Ordinance No. 19-010 as written.

THIS PAGE LEFT INTENTIONALLY BLANK

CITY COUNCIL'S DRAFT 07/11/19**DRAFT ORDINANCE NO. 19-010**

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON adopting amendments to the City of Des Moines Shoreline Master Program in compliance with RCW 90.58.080(4) relating to the Shoreline Master Program periodic review and amending DMMC 16.20.010.

WHEREAS, the Shoreline Management Act ("SMA") requires the City of Des Moines to develop and administer a Shoreline Master Program (SMP), and

WHEREAS, the City of Des Moines adopted a comprehensive SMP update as required by RCW 90.58.080(2), which was effective as of November 1, 2010, and

WHEREAS, RCW 90.58.080(4) requires the City of Des Moines to periodically review and, if necessary, revise the SMP on or before June 30, 2019, and

WHEREAS, the review process is intended to bring the SMP into compliance with requirements of the act or state rules that have been added or changed since the last SMP amendment, ensure the SMP remains consistent with amended comprehensive plans and regulations, and incorporate amendments deemed necessary to reflect changed circumstances, new information, or improved data, and

WHEREAS, the City of Des Moines developed a public participation program for this periodic review in accordance with WAC 173-26-090(3)(a) to inform, involve and encourage participation of interested persons and private entities, tribes, and applicable agencies having interests and responsibilities relating to shorelines, and

WHEREAS, the City of Des Moines has followed its adopted public participation program, including public open houses, a Farmers Market booth, news publications, a dedicated webpage, and comment periods, and

WHEREAS, the City of Des Moines used Ecology's checklist of legislative and rule amendments to review amendments to chapter 90.58 RCW and department guidelines that have occurred since the master program was last amended, and determine if local amendments

Ordinance No. ____
Page 2 of 5

are needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i), and

WHEREAS, the City of Des Moines reviewed changes to the comprehensive plan and development regulations to determine if the SMP policies and regulations remain consistent with them in accordance with WAC 173-26-090(3)(b)(ii), and

WHEREAS, the City staff prepared amendments needed to reflect changed circumstances, new information or improved data in accordance with WAC 173-26-090(3)(b)(iii), and

WHEREAS, the City of Des Moines consulted with the Department of Ecology early and often during the drafting of the amendments. The Des Moines City Council worked collaboratively with the Department of Ecology to address local interests while ensuring proposed amendments are consistent with the policy of RCW 90.58.020 and applicable guidelines in accordance with WAC 173-26-104, and

WHEREAS, a State Environmental Policy Act (SEPA) environmental checklist was prepared based upon Draft Ordinance No. 19-010, and the Des Moines SEPA responsible official issued and circulated a copy of the checklist and a Determination of Non-Significance (DNS) on March 19, 2019, and

WHEREAS, the City provided Notice of Intent to Adopt to the Washington State Department of Commerce in accordance with WAC 173-26-100(5), and

WHEREAS, the City of Des Moines provided a formal public comment period in compliance with requirements of WAC 173-26-104, and

WHEREAS, the City of Des Moines published a legal notice in the *Seattle Times* on March 19, 2019, for a public hearing on the proposed ordinance, including a statement that the hearing was intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii), and

WHEREAS, the City Council took public testimony on the proposed amendments at a public hearing on April 11, 2019 and all people wishing to be heard were heard, and

Ordinance No. ____
Page 3 of 5

WHEREAS, the City Council received public testimony at the public hearing on April 11, 2019, and reviewed said public testimony and written comments, and

WHEREAS, City Council moved Draft Ordinance No. 19-010 to a second reading on July 11, 2019, and

WHEREAS, the City of Des Moines submitted the proposed Shoreline Master Program amendments and public comments to the Department of Ecology for review. The Department of Ecology provided an initial determination of consistency on June 14, 2019, with comments recommending changes, and

WHEREAS, the City of Des Moines drafted additional amendments in response to the Department of Ecology's comments, and

WHEREAS, after considering all public comments and evidence, the City Council determined that the proposed amendments comply with all applicable laws and rules, and

WHEREAS, this completes the City's required process for periodic review in accordance with RCW 90.58.080(4) and applicable state guidelines (chapter 173-26 WAC), and

WHEREAS, the City Council finds that the amendments contained in this Ordinance are appropriate and necessary for the preservation of the public health and welfare; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. Review and evaluation. The City Council hereby finds that the review and evaluation required by RCW 90.58.080(4) have occurred, as described in the recitals above.

Sec. 2. Revisions. That out-of-date laws, rules, and guidelines, out-of-date environmentally critical area regulations, out-of-date non-conforming regulations, and development regulations regarding illuminated signs, dive/underwater parks, water-related and water-enjoyment commercial uses within the Urban Conservancy Environment, the nonconforming structure replacement

Ordinance No. ____
Page 4 of 5

cost threshold, single-family residential appurtenances, allowed yard reductions, fill, allowed activity within buffers, maintenance dredging, and other provisions are hereby amended to read as set forth in Exhibit "A" attached to this Ordinance and incorporated herein by this reference. The remaining portions of the City of Des Moines' SMP shall remain unchanged.

Sec. 3. Adoption. The City Council hereby adopts the above referenced SMP revisions and finds the amended SMP consistent with the requirements of chapter 90.58 RCW and chapter 173-26 WAC, as they apply to these amendments.

Sec. 4. Submission to Department of Ecology. The Community Development Director or Designee is directed to submit the SMP and associated documents to the Department of Ecology for their review and approval prior to formal adoption. If approved by the Department of Ecology, no further action is necessary for compliance with RCW 90.58.080(4) for the periodic review update due on June 30; 2019.

Sec. 5. DMMC 16.20.010 and section 113 of Ordinance No. 1583 as amended by Section 7 of Ordinance 1649 are each amended to read as follows:

Adopted. The "City of Des Moines Shoreline Master Program" attached as Exhibit "A" to Ord. 1583, dated January 27, 2011, and consisting of eight chapters~~133 pages~~, and Appendix "A" ~~to Ord. 1583,~~ entitled "Shoreline Inventory and Characterization Report," dated March 2005, as amended by section 7 of Ordinance No. 1649, as amended by section 5 of Draft Ordinance No. 19-010 are adopted as the official Shoreline Master Program for the City, ~~and an errata sheet, Exhibit "B" to Ord. 1649, is added to the SMP in 2016.~~ All SMP documents are available at the City Clerk's office and on the City's website, www.desmoineswa.gov.

Sec. 6. Effective date. The amendments to the SMP adopted through this Ordinance shall be effective 14 days after Department of Ecology final action as provided by RCW 90.58.090(7).

Sec. 7. Severability - Construction.

Ordinance No. ____
 Page 5 of 5

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

(2) If the provisions of this Ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this Ordinance is deemed to control.

PASSED BY the City Council of the City of Des Moines this ____ day of _____, 2019 and signed in authentication thereof this ____ day of _____, 2019.

 M A Y O R

APPROVED AS TO FORM:

 City Attorney

ATTEST:

 City Clerk

Published: _____

THIS PAGE LEFT INTENTIONALLY BLANK



PLANNING, BUILDING AND PUBLIC WORKS
www.desmoineswa.gov
21630 11TH AVENUE SOUTH, SUITE D
DES MOINES, WASHINGTON 98198-6398
(206) 870-7576 FAX (206) 870-6544



Public Comments and the City's Response

The City received comments from two individuals during the public comment period that ended on April 18, 2019. One comment was received from an individual who testified at the joint local and state public hearing held on April 11, 2019 and the other comment was received from the Muckleshoot Indian Tribe Fisheries Division Habitat Program on April 18, 2019 at 4:55 PM.

Summary of comment by JC Harris on April 11, 2019:

Three Tree Point and south of it, including Poverty Bay, is not protected, monitored appropriately, or treated with the respect it deserves. Fishing is poor. Would like Ecology to take care when allowing for any changes to the SMP in case the changes contribute to the degradation of habitat and sea life in Des Moines. A dive park would not make sense if there is no sea life to observe.

Verbatim comments from Karen Walter, Watersheds and Land Use Team Leader for the Muckleshoot Indian Tribe on April 18, 2019:

We have reviewed the available documents for the City of Des Moines' Shoreline Master Program Update/review. We offer the following comments in the interest of protecting and restoring the Tribe's treaty-protected fisheries resources.

1. In the restoration section, there is mention of replacing the culvert on Barnes Creek as a requirement of the culvert case injunction without noting its origin as a case within U.S v. Washington. Please note that correct way to describe this requirement is to say that it is part of U.S v Washington's federal court injunction.
2. It is not clear why to various accessory uses in the shoreline warrant a shoreline exemption, particularly if they would make a site less conforming and result in more impacts to shoreline areas that reduce habitat and functions needed for salmon, shellfish and other fisheries resources. There also appears to be no new analysis about the cumulative impacts associated with this proposed change.
3. Notification requirements. We request notification of all applications for projects and actions in the regulated shoreline- exemptions, variances, conditional uses, and substantial development permits. We also request a copy of all city issued approvals for these proposed permit actions. The notification language currently proposed makes no mention of the Muckleshoot Indian Tribe or affected tribes so it is not clear that we would receive these notices and decisions.

We appreciate the opportunity to review this proposal and look forward to responses to these comments.

The City's response to comment(s):

1. Comment: Des Moines shorelines are not protected, monitored appropriately, or treated with the respect they deserve. Fishing is poor.

Response: The City's shorelines are regulated by the City's SMP that was adopted in 2011. In 2011 it was determined that the SMP was consistent with State laws and rules, and specifically the Shoreline Management Act. The City is required to meet the same applicable State laws and rules that apply elsewhere in the State.

2. Comment: Would like Ecology to take care when allowing for any changes to the SMP in case the changes contribute to the degradation of habitat and sea life in Des Moines.

Response: The proposed amended SMP to be adopted in 2019 shall be consistent with State laws and rules, and specifically the Shoreline Management Act, just as the SMP was required to be consistent in 2011. A major requirement of SMPs is that they ensure no net loss of ecological functions and the City's proposed amended SMP will be held to that standard.

3. Comment: A dive park would not make sense if there is no sea life to observe.

Response: The City proposes that project-specific conditions would be added and mitigation would be required to ensure no net loss of ecological functions.

4. Comment: In the restoration section, there is mention of replacing the culvert on Barnes Creek as a requirement of the culvert case injunction without noting its origin as a case within U.S v. Washington. Please note that correct way to describe this requirement is to say that it is part of U.S v Washington's federal court injunction.

Response: The document reference will be corrected.

5. Comment: It is not clear why various accessory uses in the shoreline warrant a shoreline exemption, particularly if they would make a site less conforming and result in more impacts to shoreline areas that reduce habitat and functions needed for salmon, shellfish and other fisheries resources. There also appears to be no new analysis about the cumulative impacts associated with this proposed change.

Response: The added uses are similar in nature to other uses currently allowed as exemptions per the Shoreline Management Act. The potential impacts and associated mitigation would be similar to those exempt uses previously analyzed in the cumulative impacts discussion.

6. We request notification of all applications for projects and actions in the regulated shoreline- exemptions, variances, conditional uses, and substantial development permits. We also request a copy of all city issued approvals for these proposed permit actions. The notification language currently proposed makes no mention of the Muckleshoot Indian Tribe or affected tribes so it is not clear that we would receive these notices and decisions.

The City provides notice to the Tribes for substantial development, variances, and conditional use permits that require public notice. We defer to Ecology regarding their process for providing notice to Tribes on their decisions.

TO: Jason Woycke, AICP – Planner II – City of Des Moines

CC: Denise Lathrop, Planning and Development Services Manager – City of Des Moines; Jackie Chandler, Shoreline Administrator, WA Department of Ecology

FROM: Misty Blair, Senior Shoreline Planner, WA Department of Ecology

Date: June 14, 2019

Subject: **SMP Periodic Review - Determination of initial concurrence**

Sent via email to: JWoycke@desmoineswa.gov; DLathrop@desmoineswa.gov; jcha461@ecy.wa.gov

Brief Description of Proposed Amendment

The City of Des Moines (City) has submitted Shoreline Master Program (SMP) amendments to Ecology for initial determination of concurrence to comply with periodic review requirements of RCW 90.58.080(4). The City has elected to utilize the optional joint review process for SMP amendments available per WAC 173-26-104; therefore Ecology is required under WAC 173-26-104(3)(b) to make an initial determination of consistency with applicable laws and rules. The City proposes amendments to bring the SMP into compliance with requirements of the Act or State Rules that have been added or changed since the City's comprehensive SMP update. The City is also proposing updates to the critical areas regulations that are incorporated by reference into the SMP, and miscellaneous amendments intended to improve the clarity, consistency, and administration of the SMP.

FINDINGS OF FACT

Need for amendment

The City's comprehensive update to their SMP went into effect on November 1, 2010. The proposed amendments are needed to comply with the statutory deadline for a periodic review of the City's Shoreline Master Program pursuant to RCW 90.58.080(4). The City has identified that this periodic review will result in amendments to the SMP to address updates to the Act or implementing State Rules, changed local circumstances, new information and improved data.

SMP provisions to be changed by the amendment as proposed

The City's proposed changes fall primarily into four categories:

- those required to incorporate changes in State law (RCW 90.58) or State rule (WAC 173-26 & WAC 173-27);
- those added to update critical areas provisions; and
- those locally initiated changes to address implementation issues identified by staff and to provide flexibility for reasonably foreseeable development.

The City filled out the Ecology SMP Periodic Review checklist to address requirements of the act or state rules that have been added or changed since the last SMP amendment. Those proposed changes along with the City's locally initiated proposed changes modify the following SMP sections:

City of Des Moines
SMP Periodic Review - Determination of Initial Concurrence

SMP Chapter 1 Introduction

Section 1.1 Purpose and Responsibility – Narrative edits proposed to re-organize and add SMP Periodic Review process.

Section 1.3 Shoreline Jurisdiction– Edits proposed to clarify that the SMP does not apply to lands under exclusive federal jurisdiction.

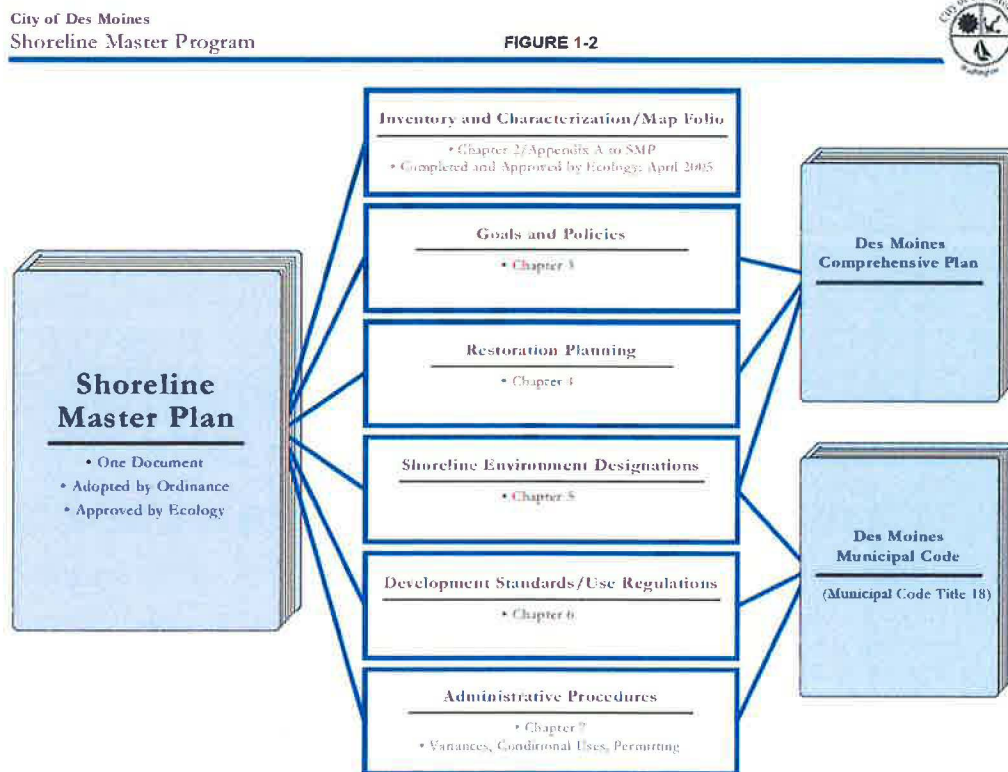
Section 1.4 Critical Areas in Shorelines– Edits proposed to remove the City’s CAO incorporation by reference to DMMC 18.86 and instead reference the imbedded critical areas provisions proposed in Chapter 6 of the SMP and administrative procedures related to critical areas in the shoreline jurisdiction found in Chapter 7 of the SMP.

Section 1.5 Compliance in Des Moines and Relationship to Other Plans – Updates to fair market value substantial development cost threshold added. Edits are also proposed to remove redundancy with the previous section and clarify that DMMC 16.10 is not applicable for critical areas located within the shoreline jurisdiction.

Section 1.6 Public Outreach – Edits proposed to update background information regarding the previous Comprehensive SMP Update and the current Periodic Review public process.

Section 1.7 Document Organization – Updates DMMC references and deletes reference to replication of SMP Policies within the City’s Comprehensive Plan.

Figure 1-2 – Updated to reflect current information.



SMP Chapter 2 Shoreline Inventory and Characterization – Summary of Findings
 Only minor edits made for spelling or grammar.

SMP Chapter 3 Master Program Goals and Policies
 Only minor edits made updating references or fixing grammar.

City of Des Moines

SMP Periodic Review - Determination of Initial Concurrence

SMP Chapter 4 Restoration Planning: Assessment, Long-term Goals and Opportunities

Only minor edits: bring up-to-date references to plans or group names, updating WRIA 9 information, and fixing grammar. As per SMP Periodic Review Checklist Item 2009(a), the City is proposing to add Section 4.7 *Relief from SMP Development Standards and Use Regulations*.

SMP Chapter 5 Shoreline Environment Designations

Section 5.2.2 (11) is modified to allow commercial development in support of water-related and water-enjoyment, such as kayak rentals, cafes, and concession stands within the Urban Conservancy SED. The Urban Conservancy SED is applied to publicly owned areas in the shoreline jurisdiction and this proposed change is intended to support and enhance public access and public recreational uses within existing parks.

SMP Chapter 6 Development Standards and Use Regulations

Minor edits (related to capitalization and formatting occurred throughout this Chapter which are not reviewed here in any more detail. Substantive modifications are described below:

Table 6-1 Shoreline Master Program Permitted Use Table

The City proposes to allow water-related and/or water-enjoyment uses within the Urban Conservancy SED, underwater parks in the Aquatic SED. In addition, the proposed amendments will allow slope stabilization measures, park improvements, and shoreline access in the High Intensity, Urban Conservancy, and Shoreline Residential SEDs. Additional footnotes provide more clarity.

	High-Intensity	Urban Conservancy	Shoreline Residential	Aquatic
SHORELINE USE				
Commercial:				
Water-dependent	P	X	X	C ¹
Water-related, and/or Water-enjoyment	P	CP	X	X
Underwater/Dive Parks	X	X	X	P
Upland Slope/Bluff Stabilization ²	P	P	P	X
Fill ³	CP	CP	CP	C ²
Paths, Walkways, Stairs, and Trails for Shoreline Access ²	P	P	P	X
Park Improvements (e.g. Trails, Benches, Art, Restrooms) ²	P	P	P	X

Section 6.1.1 is slightly re-organized to provide clarification and to accommodate a new allowance for front, side, or rear yard setback reductions when proposed to preserve the marine buffer.

Section 6.1.4 is deleted and the subsequent section is re-numbered because the City is proposing to remove the CAO incorporation by reference and instead imbed critical areas provisions directly into the SMP in the new section 6.4.

Section 6.2.2 significant new section added to address upland slope stabilization. This section provides a distinction between shoreline stabilization in the form of bulkheads or shoreline soft armoring at or near the OHMW and upland stabilization. This section proposes development standards to control upland

City of Des Moines

SMP Periodic Review - Determination of Initial Concurrence

slope instability not associated with shoreline processes or necessary to protect existing single family residences or other primary structures.

Section 6.2.6 is modified to make a distinction between new dredging activities and maintenance dredging.

Section 6.2.7 is significantly modified to provide clarity around the SMPs fill standards. The City proposes new fill standards that provide a distinction between fill proposed waterward of the OHWM and proposed landward of the OHWM.

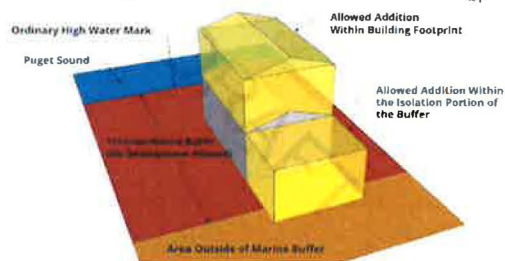
Section 6.3.2 Non-conforming uses and developments was modified to incorporate language from DMMC 18 that was previously incorporated by reference and other language was added based on changes to WAC 173-27-080.

Section 6.3.4 is modified to clarify that some commercial uses may be allowed in the Urban Conservancy SED if in support of a water-oriented use.

Section 6.3.6 is modified to allow illuminated signs within the High Intensity SED without a shoreline conditional use permit.

Section 6.3.12 was added to provide development standards for the newly allowed underwater/dive park use within the Aquatic SED.

NEW Figure 6.1 was added to illustrate the isolated area of the marine buffer where additions to legally established and constructed non-conforming residences are typically permitted.



Section 6.4 Critical Areas Development and Performance Standards the City is proposing to insert applicable critical areas regulations from DMMC 16.10 directly into the SMP to satisfy the critical areas protection requirements of the SMA.

SMP Chapter 7 Administrative Procedures

Section 7.1 Shoreline Permit Requirements – Edits proposed to clarify the administrative process, update the substantial development cost threshold per SMP Periodic Review Checklist item 2017(g), and add list of substantial development that is not required to obtain any shoreline permits or local review per SMP Periodic Review Checklist time 2017(c).

Section 7.2 Exemptions from Substantial Development Permit Requirements – Edits proposed to clarify the administrative process. Edits also update the substantial development cost threshold per SMP Periodic Review Checklist item 2017(g), add additional single family residential appurtenances, adds an exemption for ADA upgrades per Periodic Review Checklist item 2016(a), and updates the definition of development to exclude demolition per Periodic Review Checklist item 2017(b).

Section 7.3, 7.4, & 7.5 – general edits within these sections are proposed to improve permit procedures, public notice process, and appeals language for consistency with WAC 173-27.

Section 7.5.10 Allowed Activities within Critical Areas and Marine Buffer – The City proposes to add a list of activities that are permitted within marine and critical area buffers without a shoreline variance. This section includes requirements for critical areas reports and no net loss analysis as well as clarity that the underlying use and development will still need to be processed through the SDP or SDP exemption process, and a CUP shall be obtained if necessary. This list includes public access, public recreation, private shoreline access, and small at-grade patios, archaeological or cultural resource protection, limited utilities, maintenance dredging, shoreline stabilization with demonstration of need to protect existing primary structures or water-dependent uses, hazardous waste cleanup, and restoration.

City of Des Moines
SMP Periodic Review - Determination of Initial Concurrence

SMP Chapter 7 Administrative Procedures

Section 8 Definitions – general minor edits throughout for internal consistency, to update references, and to increase consistency with RCW 90.58, WAC 173-26 or WAC 173-27.

Amendment History, Review Process

The City prepared a public participation program in accordance with WAC 173-26-090(3)(a) to inform, involve and encourage participation of interested persons and private entities, tribes, and applicable agencies having interests and responsibilities relating to shorelines. The City executed this plan by hosting an open houses, creating a web page, and initiating outreach to residence, neighboring jurisdictions and tribes.

The City used Ecology's checklist of legislative and rule amendments to review amendments to chapter 90.58 RCW and department guidelines that have occurred since the master program was last amended, and determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i). The City also reviewed changes to the comprehensive plan and development regulations to determine if the shoreline master program policies and regulations remain consistent with them in accordance with WAC 173-26-090(3)(b)(ii). The City considered whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data in accordance with WAC 173-26-090(3)(b)(iii). The City consulted with Ecology and solicited comments throughout the review process.

The City provided public notice of the SMP Periodic Review process and promoted public input as outlined in their Public Participation Plan via:

- social media updates through the City's Facebook page;
- an email list serve for interested parties to self-sign-up for future notifications;
- open houses on August 14, 2018 and November 13, 2018;
- an informational booth at the Waterfront Farmer's Market on August 25, 2018;
- A webpage (<http://www.desmoineswa.gov/smp>) provided background information, updates on the periodic review, and a means to comment on the process.

The City and Ecology held a joint local/state comment period on the proposed amendments following procedures outlined in WAC 173-26-104. The comment period began on March 19 and continued through April 18, 2019. A joint local/state public hearing was held on April 11, 2019.

The City provided notice to local interested parties, including a statement that the hearings were intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii). Ecology distributed notice of the joint comment period and public hearing to state interested parties on or before March 18, 2019.

Two comments were received on the proposed amendments. The City summarized and provided responses to these comments within the City's April 22, 2019 *SMP Periodic Review Memo*. One edit to the draft SMP text was made in response to comments.

The City also issued a SEPA non-project action Determination of Non-Significance (DNS) for the City of Des Moines Shoreline Master Program Periodic Review Amendment on April 18, 2019. A copy of this DNS was provided to Ecology for this SMP Amendment adoption record.

City of Des Moines

SMP Periodic Review - Determination of Initial Concurrence

The City provided their initial submittal of the proposed SMP amendments to Ecology pursuant to WAC 173-26-104 via email on April 22, 2019 and the submittal was determined to be complete. This began Ecology's review and initial determination.

Consistency with Chapter 90.58 RCW

The proposed amendments have been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

Consistency with applicable guidelines (Chapter 173-26 WAC, Part III)

The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions). This included review of a SMP Periodic Review Checklist, which was completed by the City.

Consistency with SEPA Requirements

The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendments. Ecology did not comment on the DNS.

Other Studies or Analyses supporting the SMP update

Ecology also reviewed supporting documents prepared for the City in support of the SMP amendment. These documents include a public participation plan, a periodic review checklist, and the *SMP Periodic Review Memo to the Department of Ecology and Supporting Findings of Consistency LUA201-0012*, dated April 22, 2019.

Summary of Issues Identified by Ecology as Relevant to Its Decision

Ecology is required to review all SMPs to ensure consistency with the Shoreline Management Act (SMA) and implementing rules including WAC 173-26, State Master Program Approval/Amendment Procedures and Master Program Guidelines. WAC 173-26-186(11) specifies that Ecology "shall insure that the state's interest in shorelines is protected, including compliance with the policy and provisions of RCW 90.58.020."

Based on review of the proposed amendments to the SMP for consistency with applicable SMP Guidelines requirements and the Shoreline Management Act, and consideration of supporting materials in the record submitted by the City, the following issues remain relevant to Ecology's final decision on the proposed amendments to the City's SMP, with Findings specific to each issue identifying amendments needed for compliance with the SMA and applicable guidelines:

Critical Areas Protection Standards of the SMP

The City proposes to create a new critical area protection section (Section 6.4) within the SMP to address SMA required critical areas protection standards. Ecology has identified changes to the City's proposed amendment to the SMP's critical areas provisions that are necessary for consistency with WAC 173-26-201(2)(a) & (c), WAC 173-26-221, and WAC 173-26-191(2)(b) & (c) (Attachment 1, Items Req-1 through Req-10).

City of Des Moines

SMP Periodic Review - Determination of Initial Concurrence

Finding. Ecology finds that the proposed SMP amendment provisions of Section 1.4 do not clearly identify the specific critical areas provisions that apply within the shoreline jurisdiction. The City is proposing to rely on portions of SMP Chapters 3, 6, and 7 to provide critical areas protection consistent with the requirements of WAC 173-26-221, yet there is still a reference to DDMC 16.10.

Ecology finds that the reference to incorporation of the City's Critical Areas Ordinance DDMC 16.10 within Section 1.4 (identified in Attachment 1, item Req-1) needs to be removed for consistency with WAC 173-26-191(2)(b) & (c).

Finding. Ecology finds that the proposed SMP amendment provisions of Section 6.4.8 are not consistent with the wetland protection requirements of WAC 173-26-221(2) or the use of scientific information standard of WAC 173-26-201(2). Ecology also finds that if implemented, these provisions could result in a net loss of shoreline ecological function. The City is proposing standards for when a wetland can be filled or otherwise impacted. Ecology finds that allowing wetland and buffer impacts based on an unavoidable impacts analysis and to achieve reasonable use should only be authorized through a shoreline variance. Ecology finds that wetland buffer reduction standards must be based upon the most current and accurate scientific and technical information; therefore modifications to the proposed amendments are necessary to reflect the use of Ecology wetland guidance.

Ecology finds that the proposed Section 6.4.8 must be modified (Attachment 1, items Req-2, Req-3, Req-4) for consistency with WAC 173-26-211(2) and WAC 173-26-201(2).

Finding. Ecology finds that the City proposes to add provisions excepting wetlands smaller than 4,000 square feet from the avoidance requirements of mitigation sequencing and excepting wetlands smaller than 1,000 square feet from regulation. Ecology finds that the scientific literature does not support exempting wetlands that are below a certain size and this management approach is not supported by Ecology wetland guidance. Ecology also finds that these provisions are inconsistent with WAC 173-26-201(2)(c) which provides that,

even in situations where uses or development that impact ecological functions are necessary to achieve other objectives of RCW 90.58.020, master programs provisions shall, to the greatest extent feasible, protect existing ecological functions and avoid new impacts to habitat and ecological functions before implementing other measures designed to achieve no net loss of ecological functions.

Ecology finds that these provision (identified in Attachment 1, item Req-5) should be removed from the SMP Critical Areas Regulations for consistency with the statute and guideline.

Finding. Ecology finds that the City proposes to allow wetland impacts within the shoreline jurisdiction to be mitigated via preservation. Ecology finds that this is a risky management approach that is not clearly supported by Ecology wetland guidance and is not consistent with WAC 173-26-201(2)(a) & (c). Ecology also finds that the preservation only options for wetland mitigation do not compensate for lost or impaired shoreline functions and could therefore contribute to a net loss of shoreline ecological function.

Ecology finds that preservation alone as mitigation for wetland impacts should be excluded from the SMP Critical Areas Regulations (Attachment 1, Item Req-6) for consistency with the statute and guideline.

City of Des Moines

SMP Periodic Review - Determination of Initial Concurrence

Finding. Ecology finds that the City proposes to add Section 6.4.12(1) which establishes buffers for new development based upon previously established record on title or critical area tracts. Ecology finds that shoreline permits and wetland delineations are only valid for a period of 5 years. Ecology further finds that the SMP no net loss of ecological function standard must be based on existing conditions when new development or use is proposed.

Therefore, Ecology finds that proposed Section 6.4.12(1) should be removed from the SMP (Attachment 1, Item Req-7) because it is not consistent with WAC 173-26-201(2)(a) or WAC 173-26-201(2)(c).

Finding. The City proposes provision 6.4.15(1) to allow substitute fees for stream impacts when suitable compensatory mitigation does not exist. Ecology finds that streams within the shoreline jurisdiction contribute to the shoreline ecological function. Ecology finds that financial contributions to water quality projects within the same watershed does not provide a level of assurances necessary to demonstrate that this regulation will result in no net loss of shoreline ecological function.

Ecology finds that proposed Section 6.4.15(1) should be excluded from the SMP Critical Areas Regulations (Attachment 1, Item Req-8) for consistency with the statute and guideline.

Finding. The City proposes the provision of Section 6.4.26 as exceptions to the development restrictions and standards for critical areas within the shoreline jurisdiction. WAC 173-26-221 provides that all development and uses within the shoreline shall be designed consistent with mitigation sequencing. Ecology finds that the proposed exceptions within 6.4.26 do not address mitigation sequencing or the SMP no net loss of ecological function standard. Ecology finds that these exceptions should be based up the most current accurate and complete scientific and technical information per WAC 173-26-201(2)(a). The most recent Ecology Wetland Guidance for CAO Updates – Western Washington Version, June 2016 (Publication No. 16-06-001) provides walkways, trails, and wildlife viewing structures may be approved with a critical areas report provided they are limited to 5 feet in width, constructed of pervious materials, and located in the outer 25% of the wetland buffer. Ecology finds that the Policy of the SMA (RCW 90.58.020) contemplates allowing impacts associated with preferred or priority uses, and for the greater public benefit. Ecology finds that proposed Section 6.4.26(3) can be modified to achieve consistency with the policy of RCW 90.58.020. WAC 173-26-241(3)(k) provides that, where other options are available and feasible, new roads or road expansions should not be built within shoreline jurisdiction and that transportation projects shall be consistent with environmental protection provisions.

Ecology finds that the removal of drainage facilities, utility and roadway exceptions (Identified in Attachment 1, Item Req-9) are necessary for consistency with the use preferences identified in WAC 173-26-221 and the critical areas protection requirements of WAC 173-26-221. Ecology also finds that modifications are necessary to Section 6.4.26(3) to ensure consistency with WAC 173-26-201(2).

Finding. The City proposes performance standards for restoration of flood and geological hazards associated with unauthorized critical areas alteration within proposed SMP Section 6.4.27(2)(b). Ecology finds that the proposed standards do not address shoreline uses, mitigation sequencing, or shoreline permit requirements. Geological hazards and floodplains are critical areas in accordance with RCW 90.58 and RCW 36.70A definitions. Ecology finds that geological hazards and floodplains within the shoreline jurisdiction contribute to the shoreline ecological function.

City of Des Moines

SMP Periodic Review - Determination of Initial Concurrence

Ecology finds that additional standards (Identified in Attachment 1, Item Req-10) are necessary with Section 6.4.27(2)(b) to ensure that any critical area alteration authorized within the shoreline jurisdiction is resolved consistent with the use, development, and critical areas protections standards of the SMP.

SMP Administration, Permits and Procedures

Ecology has identified changes to the City's proposed amendment of Section 7.2.6 that are necessary for consistency with RCW 90.58 and WAC 173-27 (Attachment 1, Item Req-11). The City proposes to add patios, sheds, cabanas, hot tubs, and accessory living quarters to the list of normal appurtenances to single family residences that are eligible for an exemption from the shoreline substantial development permit process.

Finding. *Ecology finds that WAC 173-27-040(2)(g) provides that in addition to the established statewide normal appurtenances, local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within the applicable master program. WAC 173-27-040 requires that exemptions from the substantial development permit process be construed narrowly based on the purpose, intent, and policies of the SMA. The City of Des Moines defines accessory living quarters (ALQ) as a complete independent living facilities exclusive for one single housekeeping unit, including provisions for living, sleeping, cooking, and sanitation. As such, an ALQ along with the primary single family residence now provides two dwelling units which could be occupied independently by more than one family. Ecology finds that this situation no longer meets the narrowly construed single family residential exemption of WAC 173-27-040(2)(g). Ecology further finds that this development may be authorized with a substantial development permit consistent with the City's SMP, but it is not eligible for an exemption from this process.*

Ecology finds that accessory living quarters should be removed from Section 7.2.6 for consistency with the SMA and guideline.

Additional items identified as recommended changes

In addition to the issues identified above as requiring changes to ensure consistency with the SMA and its implementing guidelines, Ecology has also identified changes recommended to fix minor errors, provide clarity or improve implementation. These items can be found within Attachment 1, items Rec-1 through Rec-3.

Findings. *Ecology finds that Attachment 1, items Rec-1 through Rec-3 recommended changes, if implemented would be consistent with the policy and standards of RCW 90.58 and the applicable guidelines, however, the inclusion of these changes are at the discretion of the City and are not necessary in order to approve this Periodic Review amendment.*

INITIAL DETERMINATION

After review by Ecology of the complete record submitted, Ecology has determined that the City proposed amendments, subject to and including Ecology's required and recommended changes (itemized in Attachment 1), are consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions).

City of Des Moines**SMP Periodic Review - Determination of Initial Concurrence****Next Steps**

- Consider the changes recommended by Ecology as required and recommended to resolve the issues identified above and within Attachment 1. Please let me know if you would like to discuss alternative language or different approaches for resolving these issues.
- If these issues are resolved prior to local adoption, we anticipate being able to approve your SMP Periodic Review amendment promptly after formal submittal is provided consistent with WAC 173-26-110.

6.14.2019 City of Des Moines SMP Periodic Review Initial Determination of Consistency - Attachment 1

Ecology Recommendations to Resolve Issues Identified as Required and Recommended, June 14, 2019

The changes in **red are required** to comply with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III). Changes in **blue are recommended** and consistent with SMA (RCW 90.58) policy and the SMP Guidelines (WAC 173-26, Part III).

Item	SMP Submittal Provision	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	RATIONALE
Req-1	SMP 1.4 Critical Areas in Shorelines	Therefore, critical areas within Des Moines' shoreline areas are regulated by this Shoreline Master Program. This Program incorporates <u>contains</u> many of the <u>same</u> substantive requirements of the critical area regulations of chapter 16.10 DMMC that were last amended by ordinance No. 1649 and adopted on May 12, 2016. However, it is important to note that there are procedural differences between chapter 16.10 DMMC and the SMP. Refer to Chapter 3 for SMP policies related to critical areas; Chapter 6 for regulations related to critical areas; and Chapter 7 for administrative procedures related to critical areas.	Required change: to clarify that while some of the substantive requirements are the same, the critical areas provisions referenced here, DMMC 16.10, are not incorporated by reference into the SMP.
Req-2	SMP 6.4.8(1) Wetlands – Development standards	If a wetland is located on or contiguous to the site of a development proposal, all activities on the site shall be in compliance with the following requirements and restrictions: 1. General Performance Requirements. a. Activities may only be permitted in a wetland or wetland buffer if the applicant can show that the proposed activity will not degrade the functions and functional performance of the wetland. b. Activities and uses shall be prohibited in wetlands and wetland buffers, except as provided for in this SMP. b. New proposed development or uses that do not meet the wetland protection and buffer standards of this SMP, can only be authorized with the approval of a shoreline variance. c. Category I Wetlands. Activities and uses shall be prohibited from Category I, except as provided for in this SMP. d. Category II and III Wetlands. With respect to activities proposed in Category II and III wetlands, the following standards shall apply: i. Where wetland fill is proposed, activities and uses shall be prohibited unless the applicant can demonstrate that: A. The basic project purpose cannot reasonably be accomplished on another site or sites in the general region while still successfully avoiding or resulting in less adverse impact on a wetland; and B. All on-site alternative designs that would avoid or result in less adverse impact on a wetland or its buffer, such as a reduction in the size, scope, configuration or density of the project, are not feasible. Compensation for the loss of acreage and functions of wetland and buffers shall be provided under the terms established under SMP 6.4.11. e. Category IV Wetlands. Activities and uses that result in unavoidable and necessary impacts may be permitted in Category IV wetlands and associated buffers in accordance with an approved special environmental study and mitigation plan, and only if the proposed activity is the only reasonable alternative that will accomplish the applicant's objectives. Compensation for the acreage and loss functions will be provided under the terms established under SMP 6.4.11.	Required change: Delete these wetland impact allowances. Activities and uses should not be permitted in wetlands or their buffers. Subsection a. and b. appear to be in conflict where one says "Activities may be permitted in a wetland or buffer" and the other states "activities shall be prohibited in wetland and wetlands buffers". The subsequent sections of SMP 6.4 do provide some allowances for wetland impacts associated with preferred and priority uses and the new section 7.5.10 provides additional allowed activities within critical area and marine buffers. The provisions here are designed to guide the review and approval for critical areas ordinance application, which do not apply within the shoreline jurisdiction. Additionally, the standards and review criteria proposed in SMP 6.4.8 are not based on SMA policies or goals. According to RCW 90.58 and RCW 36.70A wetlands are to be protected. Part of that protection is providing buffers that enable water quality and habitat functions. The wetland protection standards and buffer requirements of this SMP cannot be modified beyond the allowances for certain water-oriented uses (consistent with public access and use preference) and buffer averaging (consistent with BAS). Further modifications require a shoreline variance. The City's critical areas provisions outside the SMP rely on reasonable use exemptions to approve activities and uses within wetlands and their buffers. Wetlands within the shoreline jurisdiction contribute to the shoreline ecological function, allowances for impacts to these functions should be based on SMA use preferences and policies of RCW 90.58.020. A shoreline variance would be the applicable process to provide relief from the wetland standards of the SMP. The Shoreline Variance criteria apply equally to any proposal that is not meeting a bulk, dimensional, or performance standard of the SMP and considers reasonable use, no net loss of ecological function and can only be applied for associated with permitted uses consistent with the SMA.

6.14.2019 City of Des Moines SMP Periodic Review Initial Determination of Consistency - Attachment 1

Req-3	SMP 6.4.8(2) wetland buffers	a. Where a legally established and constructed street transects a wetland buffer, the City Manager or the City Manager's 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 and provides insignificant biological, geological or hydrological buffer functions relating to the wetland. If the resulting buffer distance is less than 50 percent of the standard buffer for the applicable wetland category, no further reduction shall be allowed through wetland buffer reduction or averaging. b. Where a buffer has been previously established through City or county development review, and is permanently recorded on title or placed within a separate tract, the buffer shall be as previously established.	Required change: Change required for consistency with WAC 173-26-201(2)(a) Use of scientific and technical information and WAC 173-26-201(2)(c) Protection of ecological functions of the shorelines. a. Delete or modify this provision to provide clarity. This provision allows development activities to occur in the isolated portion of the buffer - it doesn't actually reduce the buffer, implies that the buffer now ends at the edge of the right-of-way and if that was still more than 50% of the standard buffer then that buffer could be further reduced or averaged. This issue is already address, consistently with Ecology guidance, in proposed SMP 6.4.8(6)(b). b. Delete this provision. The City is required to ensure no net loss of ecological functions based on existing conditions. In other words, the site specific analysis that must occur when development is proposed on a site is based upon existing buffer conditions not based on buffer established for previous development action. Implementing this provision could result in a net loss of shoreline ecological function. Shoreline permit reviews and approval are only valid for 5 years. The placement of a notice or recording on title is for notification purposes- it does not permanently set that buffer for all future new development.
Req-4	SMP 6.4.8(6) Wetland Buffer Reduction	6. Wetland Buffer Reduction. The City Manager or the City Manager's designee may allow <u>up to a 25%</u> reduction of the required wetland buffer widths when accompanied by a special study that identifies appropriate mitigation strategies. Reduction of wetland buffer widths may be allowed where a qualified professional wetland scientist demonstrates that: a. The reduction in buffer width is based on reducing the intensity of impacts from proposed land uses. Buffer widths required for proposed land uses with high-intensity impacts to wetlands may be reduced to those recommended for moderate-intensity impacts under the following conditions: i. For wetlands that score moderate or high for habitat (five points or more for the habitat functions), the width of the buffer 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 shall be protected for the entire distance between the wetland and the priority habitat by some type of legal protection such as a conservation easement. B. <u>The following Mmeasures</u> to minimize the impacts of different land uses on wetlands, such as the examples summarized in Table 8C-8 from "Wetlands in Washington State: Volume 2—Protecting and Managing Wetlands" (Ecology, 2005) in Table 6.2, are applied. ii. For wetlands that score less than five points for habitat, the buffer width can be reduced <u>by up to 25% provided all applicable minimization measures in Table 6.2 are applied,</u> to that required for moderate land-use impacts by applying measures to minimize the impacts of the proposed land uses. Measures include but are not limited to the following: direct light and noise away from wetlands, route untreated runoff away from wetlands, apply an integrated pest management program, use privacy fencing or vegetative buffer to delineate the wetland buffer edge and discourage disturbance, and use best management practices to control dust (see examples in Table 8C-8). <u>(Add new below) Table 6.2</u>	Required change: Change required for consistency with WAC 173-26-201(2)(a) Use of scientific and technical information and WAC 173-26-201(2)(c) Protection of ecological functions of the shorelines. • Add a 25% limitation to the reduction allowance; and • Include the minimization measures table, reference it, and require the use of these minimization measures, when applicable. The most recent Ecology <i>Wetland Guidance for CAO Updates – Western Washington Version, June 2016 (Publication No. 16-06-001)</i> provides that standard buffers, such as those proposed by the City of Des Moines, can be reduced by up to twenty-five percent (25%) if the buffer is well vegetated with native species appropriate for the ecoregion and if impacts are reduced using the minimization table, and existing habitat corridors are protected. Modification are necessary to the proposed provisions in order to be consistent with the above reference guidance. As modified, this provision will provide wetland buffers consistent with the most current and accurate scientific and technical information and provides the framework for permitting projects that have no net loss of shoreline ecological function. Any further buffer reduction could only be authorized with an approved Shoreline Variance.

6.14.2019 City of Des Moines SMP Periodic Review Initial Determination of Consistency - Attachment 1

		Table XX.2 Required measures to minimize impacts to wetlands (All measures are required if applicable to a specific proposal) <table><tr><th>Disturbance</th><th>Required Measures to Minimize Impacts</th></tr><tr><td>Lights</td><td> • Direct lights away from wetland </td></tr><tr><td>Noise</td><td> • Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer </td></tr><tr><td>Toxic runoff</td><td> • Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 ft of wetland • Apply integrated pest management </td></tr><tr><td>Stormwater runoff</td><td> • Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer • Use Low Intensity Development techniques (for more information refer to the drainage ordinance and manual) </td></tr><tr><td>Change in water regime</td><td> • Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns </td></tr><tr><td>Pets and human disturbance</td><td> • Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion • Place wetland and its buffer in a separate tract or protect with a conservation easement </td></tr><tr><td>Dust</td><td> • Use best management practices to control dust </td></tr></table> b. Reductions in buffer widths where existing roads or structures lie within the buffer. Where a legally established, nonconforming use of the buffer exists (e.g., a road or structure that lies within the width of buffer recommended for that wetland), proposed actions in the buffer may be permitted as long as they do not increase the degree of nonconformity, or if no reasonable alternative exists. This means no increase in the impacts to the wetland from activities in the buffer.	Disturbance	Required Measures to Minimize Impacts	Lights	• Direct lights away from wetland	Noise	• Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer	Toxic runoff	• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 ft of wetland • Apply integrated pest management	Stormwater runoff	• Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer • Use Low Intensity Development techniques (for more information refer to the drainage ordinance and manual)	Change in water regime	• Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns	Pets and human disturbance	• Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion • Place wetland and its buffer in a separate tract or protect with a conservation easement	Dust	• Use best management practices to control dust	
Disturbance	Required Measures to Minimize Impacts																		
Lights	• Direct lights away from wetland																		
Noise	• Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer																		
Toxic runoff	• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 ft of wetland • Apply integrated pest management																		
Stormwater runoff	• Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer • Use Low Intensity Development techniques (for more information refer to the drainage ordinance and manual)																		
Change in water regime	• Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns																		
Pets and human disturbance	• Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion • Place wetland and its buffer in a separate tract or protect with a conservation easement																		
Dust	• Use best management practices to control dust																		
Req-5	SMP 6.4.10 Wetlands Limited Exceptions	The City Manager or the City Manager's designee may allow exceptions from the provisions of this section based on the following criteria: 1. Wetlands larger than 4,000 square feet will be evaluated using standard procedures for wetland review. 2. Wetlands between 1,000 and 4,000 square feet shall be evaluated using the Washington State Wetland Rating System for Western Washington (Ecology Publication No. 14-06-28, October 2014, or as revised) to establish category and evaluate functions. The following criteria and local knowledge of natural resources shall be used to determine whether to exempt wetlands between 1,000 and 4,000 square feet from the requirement to avoid impacts:	Change required for consistency with WAC 173-26-221 and WAC 173-26-201(2)(c). Wetlands within the shoreline jurisdiction contribute to the shoreline ecological function, as such all wetland (regardless of size or category) must be protected within the shoreline. Mitigation sequencing shall be applicable to all wetland impacts. The scientific literature does not support exempting wetlands that are below a certain size. For consistency with WAC 173-26-201(2)(a) Use of scientific and technical information.																

6.14.2019 City of Des Moines SMP Periodic Review Initial Determination of Consistency - Attachment 1

		a. The requirement to avoid impacts may be dropped for Category III and IV wetlands between 1,000 and 4,000 square feet that meet all of the following criteria: i. Wetland is not associated with a riparian corridor; and ii. Wetland is not part of a wetland mosaic; and iii. Wetland does not score five points or more for habitat in the wetland rating system; and iv. Wetland does not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife. b. Impacts allowed under this provision to these wetlands will be fully mitigated as set forth in SMP 6.4.11. c. All Category I and II wetlands between 1,000 and 4,000 square feet should be evaluated with full mitigation sequencing and buffer establishment. Any approved impacts should be adequately compensated by mitigation as set forth in SMP 6.4.11. 3. Wetlands less than 1,000 square feet shall be exempt from regulation where the applicant has shown that they: a. Are not associated with a riparian corridor; b. Are not part of a wetland mosaic; and c. Do not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife.	- All SMP provisions must use the most current, accurate, and complete scientific and technical information available, as relevant or applicable to the issues of concern. The most recent Ecology <i>Wetland Guidance for CAO Updates – Western Washington Version, June 2016 (Publication No. 16-06-001)</i> does not support this provision. The above referenced BAS guidance provides that isolated Category IV wetlands less than 4,000 sq ft and all wetlands less than 1,000 sq ft can be exempt from the requirement to avoid impacts and can be impacted if fully mitigated. However, this allowance only applies to wetlands that are <u>not</u> associated with shorelines of the state or their buffers. For consistency with WAC 173-26-201(2)(c) Protection of ecological functions of the shorelines. <i>Nearly all shoreline areas, even substantially developed or degraded areas, retain important ecological functions.</i> - These proposed exception does <u>not</u> adequately protect critical areas within the shoreline and could result in a net loss of shoreline ecological function. - Shoreline ecosystems are interconnected. For this reason the SMA policies and guideline requirements for SMP regulations are intended to provide for protection of all ecological functions and generally apply to all shoreline areas, not just those that remain relatively unaltered. <i>Even in situations where uses or development that impact ecological functions are necessary to achieve other objectives of RCW 90.58.020, master program provisions shall, to the greatest extent feasible, protect existing ecological functions and avoid new impacts to habitat and ecological functions before implementing other measures designed to achieve no net loss of ecological functions.</i> Therefore, for consistency with these wetlands shall continue to be protected without exception.
Req-6	SMP 6.4.11(8) Preservation	Impacts to wetlands may be mitigated by preservation of wetland areas <u>only</u> when used in combination with other forms of mitigation such as creation, restoration, or enhancement. Preservation may also be used by itself, but more restrictions apply as outlined below: a. Acceptable Uses of Preservation. The preservation of at-risk, high quality wetlands and habitat may be considered as part of an acceptable mitigation plan when the following criteria are met: i. Preservation is used as a form of compensation only after the standard sequencing of mitigation (avoid, minimize, and then compensate). See subsection (2) of this section; ii. Restoration (re-establishment and rehabilitation), creation, and enhancement opportunities have also been considered, and preservation is proposed by the applicant and approved by the permitting agencies as the best compensation option; iii. The preservation site is determined to be under imminent threat; that is, the site has the potential to experience a high rate of undesirable ecological change due to on-site or off-site activities that are not regulated (e.g., logging of forested wetlands). This potential includes permitted, planned, or likely actions; iv. The area proposed for preservation is of high quality or critical for the health of the watershed or basin due to its location. Some of the following features may be indicative of high quality sites: A. Category I or II wetland rating;	Required Change: Delete allowances for preservation as a sole means of mitigation. For consistency with WAC 173-26-201(2)(a) Use of scientific and technical information and WAC 173-26-201(2)(c) Protection of ecological functions of the shorelines. - All SMP provisions must use the most current, accurate, and complete scientific and technical information available, as relevant or applicable to the issues of concern. The most recent Ecology <i>Wetland Guidance for CAO Updates – Western Washington Version, June 2016 (Publication No. 16-06-001)</i> provides that mitigation ratios for preservation in combination with other forms of mitigation generally range from 10:1 to 20:1, as determined on a case-by-case basis, depending on the quality of the wetlands being impacted and the quality of the wetlands being preserved. Ratios for preservation as the sole means of mitigation generally start at 20:1. - Preservation as a means of wetland mitigation within the shoreline does not compensate for lost or impacted functions within the shoreline; therefore could result in a net loss of shoreline ecological function.

6.14.2019 City of Des Moines SMP Periodic Review Initial Determination of Consistency - Attachment 1

		B. Rare or irreplaceable wetland type (e.g., bogs, mature forested wetlands, estuaries) or aquatic habitat that is rare or a limited resource in the area; C. Habitat for threatened or endangered species; D. Provides biological and/or hydrological connectivity; E. High regional or watershed importance (e.g., listed as priority site in a watershed or basin plan); F. Large size with high species diversity (plants and/or animals) and/or high abundance of native species; G. A site that is continuous with the head of a watershed, or with a lake or pond in an upper watershed that significantly improves outflow hydrology and water quality. b. Preservation in Combination with Other Forms of Compensation. Using preservation as compensation is acceptable when done in combination with restoration, creation, or enhancement; provided, that a minimum of 1:1 acreage replacement is provided by reestablishment or creation and the criteria below are met: i. All criteria listed in subsection (8)(a) of this section are met; ii. The impact area is small and/or impacts are occurring to a low functioning system (Category III or IV wetland); iii. Preservation of a high-quality system occurs in the same watershed or basin as the wetland impact; iv. Preservation sites include buffer areas adequate to protect the habitat and its functions from encroachment and degradation; and v. Mitigation ratios for preservation in combination with other forms of mitigation shall range from 10:1 to 20:1, as determined on a case-by-case basis, depending on the quality of the wetlands being impacted and the quality of the wetlands being preserved. c. Preservation as the Sole Means of Compensation for Wetland Impacts. Preservation alone shall only be used as compensatory mitigation in exceptional circumstances. Preservation alone shall not apply if impacts are occurring to functions that must be replaced on-site, such as flood storage or water quality treatment that need to be replicated by water quality measures implemented within the project limits. Preservation of at-risk, high quality wetlands and habitat (as defined above) may be considered as the sole means of compensation for wetland impacts when the following criteria are met: i. All criteria listed in subsections (8)(a) and (8)(b) of this section are met; ii. There are no adverse impacts to habitat for fish and species listed as endangered and threatened; iii. There is no net loss of habitat functions within the watershed or basin; iv. Higher mitigation ratios are applied. Mitigation ratios for preservation as the sole means of mitigation shall generally start at 20:1. Specific ratios should depend upon the significance of the preservation project and the quality of the wetland resources lost	
Req-7	SMP 6.4.12(1)	b. Where a buffer has been previously established through City or county development review, and is permanently recorded on title or placed within a separate tract, the buffer shall be as previously established, provided it is at least 50 percent of the required standard buffer distance.	Required change: Change required for consistency with WAC 173-26-201(2)(a) Use of scientific and technical information and WAC 173-26-201(2)(c) Protection of ecological functions of the shorelines. The City is required to ensure no net loss of ecological functions based on existing conditions. In other words, the site specific analysis that must occur when development is proposed on a site is based upon existing buffer conditions not based on buffer established for previous development action. Implementing this provision could result in a net loss of shoreline ecological function. Shoreline permit approval and wetland delineations are only valid for 5 years and authorize a particular development. The placement of a notice or recording on title is for notification purposes- it does not permanently set that buffer for all future new development.

6.14.2019 City of Des Moines SMP Periodic Review Initial Determination of Consistency - Attachment 1

Req-8	SMP 6.4.15(1) Stream Mitigation Requirement	e. Substitute Fees. In cases where the applicant demonstrates to the satisfaction of the City Manager or the City Manager's designee that a suitable compensation site does not exist, the City Manager or the City Manager's designee may allow the applicant to make a financial contribution to a water quality project or program performing critical areas enhancement, restoration, or mitigation. The project or program shall improve environmental quality within the same watershed as the altered stream. The amount of the fee shall be determined by the City Manager or the City Manager's designee and shall be equal to the cost of mitigation the impact of the stream alteration.	Required change: Delete this allowance. Not consistent with the SMA no-net-loss of shoreline ecological function standard. The project level no net loss requirement is site specific. Shoreline functions cannot be replaced elsewhere in the watershed.
Rec-1	SMP 6.4.23.2(a)	iii. Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292 220-610-100).	The WAC referenced here is out of date. Recommend updated to current WDFW provision.
Req-9 Rec-2	SMP 6.4.26 Allowed activities within critical areas and critical areas buffers.	Exceptions to the development restrictions and standards set forth in SMP 6.4.6 through 6.4.24 shall may be permitted pursuant to the following provisions, <u>provided the applicant demonstrates mitigation sequencing resulting in no net loss of shoreline ecological function:</u> 1. Emergencies. The City Manager or the City Manager's designee may approve improvements that are necessary to respond to emergencies that threaten the public health and safety, or public development proposals when he/she determines that no reasonable alternative exists and the benefit outweighs the loss. Emergencies shall be verified by a licensed engineer. 2. Drainage Facilities. a. Wetlands, streams and their buffers shall not be altered for use as any private drainage facility. Drainage facilities near these areas shall satisfy all requirements of the Surface Water Design Manual. b. Wetlands, streams and their buffers may be altered for use as a public drainage facility, provided, that all requirements of the Surface Water Design Manual and all other local, state, and federal laws are satisfied, and so long as increased and multiple natural resource functions are achievable and the benefits outweigh the lost resource. The City Manager or the City Manager's designee may approve drainage facilities in a wetland or stream only where he/she determines that long-term impacts are minimal or where there are no practicable or reasonable alternatives and mitigation is provided. c. Ravine sidewalls and bluffs and their buffers shall not be altered for use as any private facility, but may be altered for a public facility if all requirements of the Surface Water Design Manual are satisfied. Drainage facilities on hillsides shall satisfy all requirements of the Surface Water Design Manual. 3. Trails and Trail-Related Facilities. Public and private trails and trail-related facilities, such as picnic tables, benches, interpretive centers and signs, <u>and viewing platforms, and campsites, shall may</u> be allowed, but use of impervious surface shall be minimized. Trails and trail-related facilities shall be avoided within wetlands and streams. The City Manager or the City Manager's designee may approve such trails and facilities only when he/she determines that there are no practicable or reasonable upland alternatives. Trail planning, construction, and maintenance shall adhere to the following additional criteria: a. Trails and related facilities shall, to the extent feasible, be placed on existing levees, road grades, utility corridors, or any other previously disturbed areas; and b. Trails and related facilities shall be planned to <u>minimize avoid</u> removal of trees, shrubs, snags, and important wildlife habitat; and c. Trail construction and maintenance shall follow the U.S. Forest Service "Trails Management Handbook" (FSH 2309.18, June 1987) and "Standard Specifications for Construction of Trails" (EM-7720-102, June 1984) or as amended; and d. Viewing platforms, interpretive centers, <u>campsites</u>, picnic areas, benches, and access to them shall be designed and located to minimize disturbance; and	1. WAC 173-27-040 already addresses emergency actions in the shoreline. This allows actions necessary to abate any emergency within the shoreline jurisdiction, however, subsequent permits (substantial development, CUP, or Variance) must be applied for after-the-fact, if applicable. The development action must still be reviewed for consistency with the SMP and all adverse impacts must be mitigated to achieve no net loss of ecological function. Recommendation: delete this provision for internal consistency and consistency with SMA no net loss standard. 2. The allowances in this provision contemplate a loss or resources and rely on review standards that should be processed through a shoreline variance. Required change: delete this allowance from the SMP. If this scenario was to arise, the applicant could demonstrate consistency with the shoreline variance criteria in order to get authorization for such an impact. 3. All SMP provisions must use the most current, accurate, and complete scientific and technical information available, as relevant or applicable to the issues of concern. The most recent Ecology <i>Wetland Guidance for CAO Updates – Western Washington Version, June 2016 (Publication No. 16-06-001)</i> provides walkways, trails, and wildlife viewing structures may be approved with a critical areas report provided they are limited to 5 feet in width, constructed of pervious materials, and located in the outer 25% of the wetland buffer. Any raised boardwalks should utilize non-treated pilings. Campsites are not a passive or low impact recreational use, and should not be allowed within wetland buffers. Required change: modify this provision for consistency with Ecology guidance and to implement the policy of the SMA. 4. This provision does not appear consistent with use preferences or WAC 173-26-241(3)(k) Transportation and parking. Additionally this allowance is very broad, without limitation or standards specific to the SED it is located in. Required change: delete this allowance from the SMP. If this scenario arises, the applicant can a demonstrate consistency with the shoreline variance criteria in order to obtain authorization for this type of shoreline impact. 5. & 6. It is unclear what permit is being reference in this section. All development and critical areas impacts occurring within the shoreline jurisdiction must be reviewed through the authorities of the SMA. The SMA only provides for shoreline substantial development permits, shoreline conditional use permits, and shoreline variances. The proposed permit time limitations and time extensions in these

6.14.2019 City of Des Moines SMP Periodic Review Initial Determination of Consistency - Attachment 1

	e. Trails and related facilities shall provide water quality protection measures to ensure that runoff from them does not directly discharge to wetlands or streams; and f. Within the buffer, trails and trail-related facilities shall be aligned and constructed to minimize disturbance to wetland and stream functions and values; <u>and</u> <u>g. Trails and related facilities shall be located only in the outer twenty-five percent (25%) of the wetland buffer area, except for trail segments providing direct access to the shoreline; and</u> <u>h. Trails shall be limited to pervious surfaces no more than five (5) feet in width for pedestrian use only. Raised boardwalks utilizing non-treated pilings may be acceptable.</u> <u>4. Utility and Roadway Construction. Construction of utilities and roadways shall be avoided within critical areas. The City Manager or the City Manager's designee may approve utilities and/or roadways in critical areas and their buffers only when he/she determines that there are not practicable or reasonable alternatives. Utility and roadway corridor alignment, construction, restoration, and maintenance shall adhere to the following additional criteria:</u> <u>a. Corridor alignment shall follow a path of least impact to the functions of critical areas;</u> <u>b. Corridor construction and maintenance shall maintain and protect the hydrologic and hydraulic functions of wetlands and streams and the stability of ravine sidewalls and bluffs;</u> <u>c. Corridors shall be fully revegetated with native vegetation upon completion of construction pursuant to the development standards set forth in SMP 6.4.6 through 6.4.24;</u> <u>d. Any pipeline crossing of a stream channel shall employ one or more of the following measures:</u> <u>i. Jacked or bored under active stream channel starting outside the ordinary high water mark;</u> <u>ii. Suspension over the active channel; or</u> <u>iii. Restoration of functions and values of natural stream channel features where channel disturbance is unavoidable;</u> <u>e. Any required construction or maintenance roads shall be the minimum width necessary to gain access. Roads shall be maintained without use of herbicides and, when specified by the City Manager or the City Manager's designee, shall be available for use as a trail. Roads necessary for construction or maintenance purposes shall closely approximate the location of the utility and/or primary roadway to minimize disturbance; and</u> <u>f. Within a required buffer area, utilities and roadways shall be aligned and constructed to minimize disturbance to critical area functions and values.</u> <u>5. Time Limitation. Approval of activities automatically expires and is void if the applicant fails to file for a building permit or other necessary development permit within one year of the effective date of the permit approval, unless either:</u> <u>a. The applicant has received an extension for the permit pursuant to this section; or</u> <u>b. The permit approval provides for a greater time period.</u> <u>6. Time Extension. The City Manager or the City Manager's designee may extend a development extension, not to exceed one year, if:</u> <u>a. Unforeseen circumstances or conditions necessitate the extension of the permit; and</u> <u>b. Termination of the permit would result in unreasonable hardship to the applicant, and the applicant is not responsible for the delay; and</u> <u>c. The extension of the permit will not cause adverse impacts to critical areas.</u>	sections are not consistent with RCW 90.58.143. Required change: Delete these provisions from the SMP
--	---	--

6.14.2019 City of Des Moines SMP Periodic Review Initial Determination of Consistency - Attachment 1

Req-10	SMP 6.4.27(2)(b) Unauthorized critical area alterations and enforcement	b. For alterations to flood and geological hazards, the following minimum performance standards shall be met for the restoration of a critical area; provided, that if the violator can demonstrate that greater safety can be obtained, these standards may be modified: i. The hazard shall be reduced to a level equal to, or less than, the predevelopment hazard; ii. Any risk of personal injury resulting from the alteration shall be eliminated or minimized; and iii. The hazard area and buffers shall be replanted with native vegetation sufficient to minimize the hazard. <u>iv. Information demonstrating compliance with the requirements of this SMP shall be submitted to the City Manager or the City Manager's designee.</u>	Geological hazards and floodplains within the shoreline jurisdiction also contribute to the shoreline ecological function and all new uses and development actions are subject to compliance with the SMP. Hazard mitigation should not be the only review criteria here. Required change: Include a requirement that the applicant demonstrate compliance with the SMP. The language proposed is the same requirement from the subsection above, SMP 6.4.27.2(a)(iv).
Req-11	SMP 7.2.6	Construction on shorelands by an owner, lessee or contract purchaser of a single family residence or an addition to a single family residence for his/her own use or for the use of his/her family, which residence does not exceed a height of thirty (30) feet above average grade level and which meets all requirements of the state agencies having jurisdiction and the City, "Single-family residence" means a detached dwelling designed for and occupied by one family, including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Construction of a single-family residence may include grading which does not exceed two hundred fifty (250) cubic yards, and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. In addition, Des Moines <u>may</u> consider <u>a</u> patios, <u>two (2)</u> sheds; <u>one (1)</u> cabana; <u>or one (1)</u> hot tub <u>and one (1) accessory living quarters</u> to be normal appurtenances within the City. Construction authorized under this exemption shall be located landward of the ordinary high water mark.	Required Change: Delete the accessory living quarters allowance. This exemption from the substantial development permit process is to be construed narrowly. This exemption (WAC 173-27-040(g)) is intended to allow single family residential development without a shoreline substantial development permit, however, by adding accessory living quarters to this allowance it would no longer meet the "single-family residence" definition. The home would no longer be designed for and occupied by one family. An accessory living quarters can still be permitted within the shoreline jurisdiction with a shoreline substantial development permit.
Rec-3	SMP 7.3.4 Public Notice SMP 7.4.5 Public Notice SMP 7.5.4 Public Notice	7.3.4 Public Notice Applicants are responsible for the following public notices as part of any Substantial Development Permit application. If compliance with SEPA is required for the proposal, public notice requirements under SEPA may be satisfied concurrently as part of the Substantial Development Permit process. 1. Notification by regular mail no less than <u>twenty (20) days</u> <u>thirty (30) days</u> prior to issuance of permit to all owners of property lying within 300 feet of the exterior boundaries of where substantial development is taking place or activities supporting the proposed improvement. The form of such notice shall be provided by the City and the content shall be approved by the Shoreline Administrator prior to mailing. 2. Posting of a thirty-two (32) square foot sign at the subject property, presenting the following information: a. Type of permit applied for; b. Brief description of proposed use; c. Address of subject property; d. Applicant's name; 3. Publication of public notice in a newspaper with local distribution no less than thirty (30) days prior to issuance of permit. 4. An affidavit that the notice has been properly published, posted and deposited in the U.S. mail pursuant to the above requirements shall be submitted to the Shoreline Administrator at least thirty (30) days in advance of the issuance of permit.	Recommended change: Consider changing this to 30-days. There appears to be internal inconsistency issue with the below requirements of subsection 3 and 4. Additionally, this 20 day notice is not consistent with the minimum requirements of WAC 173-27 <i>Shoreline Management Permit and Enforcement Procedures</i>. WAC 173-27-110 requires that for shoreline substantial development, conditional use, and variance permits local governments must provide a notice of application within 14 days of completeness, followed by a public comment period of no less than 30 days.



PLANNING, BUILDING AND PUBLIC WORKS
www.desmoineswa.gov
21630 11TH AVENUE SOUTH, SUITE D
DES MOINES, WASHINGTON 98198-6398
(206) 870-7576 FAX (206) 870-6544



Due to the large size of the proposed amended Shoreline Master Program, the document may be accessed at this link: <http://www.desmoineswa.gov/DocumentCenter/View/4577/Proposed-Amended-SMP-with-Revisions>. Hard copies will be printed out on request.

THIS PAGE LEFT INTENTIONALLY BLANK

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Equipment Purchase

ATTACHMENTS:

1. Surface Water Excavator and Trailer
2. Marina and Parks Utility Vehicles
3. Streets Poly Sanders
4. Streets Spreader Stands

FOR AGENDA OF: July 11, 2019

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: July 3, 2019

CLEARANCES:

- ☐ Community Development N/A
- ☒ Marina *JS*
- ☐ Parks, Recreation & Senior Services N/A
- ☒ Public Works *RBC*

CHIEF OPERATIONS OFFICER: *DSB*

- ☒ Legal *MW*
- ☒ Finance *GR*
- ☐ Courts N/A
- ☐ Police N/A

APPROVED BY CITY MANAGER
FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation

The purpose of this Agenda Item is to seek City Council authorization to purchase a Kobelco 45SRX-6E excavator and BigTex 16TL-22 trailer (Attachment 1), two (2) John Deere XUV835M HVAC Utility vehicles for Marina and Parks use (Attachment 2), two (2) Boss Poly sand spreaders (Attachment 3), and four (4) SaltDogg galvanized spreader stands (Attachment 4).

Suggested Motions:

Motion 1: "I move to approve the purchase of utility vehicles and equipment identified in Attachments 1 through 4 for a total amount of approximately \$167,000 and to authorize the City Manager or designee to sign subsequent purchase orders."

Motion 2: "I move to direct staff to forward a budget amendment for the purchase of this equipment".

Background

The Public Works and Marina Departments have identified the need to purchase equipment in order to improve efficiency with regard to in-house maintenance and improvement projects, as well as enhancements to the City's snow and ice response and operations.

Discussion

Surface Water excavator and trailer

Historically the City's surface water maintenance division has utilized a backhoe to perform maintenance activities. Our backhoe is a good piece of equipment for many tasks, however, it does have some significant limitations which impact our crew efficiency. For example, it has a 200 degree maximum rotation and when it comes to larger excavation projects with heavy-duty digging this does not work well. An excavator can rotate 360 degrees to enable digging and moving of dirt large distances without having to drive the excavator to a different location. Excavators are also ideal for trench work since the machinery can straddle a trench and take up a smaller work zone than a backhoe. Currently, when tasked with larger maintenance activities and/or pipe installations, the maintenance division has rented an excavator. The typical rental costs the City approximately \$1,200 each time. Staff estimates having spent roughly \$10,000 each year on renting an excavator. Based on historical use, the excavator would pay for itself in about six years, however, potentially earlier with the increased focus of pipe replacements scheduled in the next 5 years. A trailer more suitable for loading and unloading an excavator would be needed. Staff plans to surplus our existing Eager Beaver trailer at a future date which should recover approximately 70% of the new trailer costs.

Maintenance staff has reviewed several excavators with field demonstrations and have recommended the Kobelco 45SRX-6E Excavator with BigTex 16TL-22 trailer (Attachment 1).

Marina and Parks utility vehicles

Typically during a snow or ice event, the maintenance crews utilize 5 and 10 ton dump trucks outfitted with snow plows to plow, sand, and de-ice the priority routes. Additionally, smaller 1 ton pick-up style trucks are used for the intersections, and public parking lots (City Hall, Marina, Activity Center etc.). The 1 ton trucks, when equipped with a snow plow and sander are bulky, making maneuverability in smaller spaces difficult. A decision was made in 2019 to provide local road plowing to specific neighborhoods coordinated with the solid waste services in order to avoid multiple weeks of missed garbage collection. This effort was very successful in the North Hill neighborhood during this last storm. One of the challenges however with using a traditional snow plow on local roads is the snow build up in cul-de-sacs do the space and larger size of the trucks. In addition, currently all public facility sidewalks are shoveled manually.

With the purchase of the two utility vehicles (equipped with snow plow attachments), City crews will have the ability to clear snow from parking lots much more efficiently, and will have the capability to work on neighborhood streets and cul-de-sacs, once priority routes have been cleared. If time allows, and because of their size, the utility vehicles are ideal for sidewalks, walkways and trails such as the Des Moines Creek Trail and walkway along the Marina bulkhead.

During normal routine operations the new utility vehicle would be replacing the use of a golf cart currently used in the Marina. Marina staff anticipates the new utility vehicles will be used to haul tools and materials for dock maintenance, provide the ability to clear larger limbs and debris off the trail, be able to tow smaller boats and trailers around the Marina floor, assist with transporting guests in a closed and heated cab, and help support special events with greater flexibility.

During normal routine operations in the Parks Division, the new utility vehicle will be used to assist the newly formed landscape crew with hauling tools and equipment on streetscape maintenance and repairs, irrigation repairs at the larger parks, Steven J. Underwood (SJU), and the linear streetscapes, and used to spray turf at SJU and Fieldhouse Park.

Staff has reviewed and test driven several utility vehicles and have recommended the John Deere XUV835M HVAC with Hydraulic V-plow (Attachment 2).

Streets Poly sanders

Currently the 1 yard sander used in the 1-ton pickups has continual maintenance issues because of the metal and sand/salt mix creating corrosion. The new poly sanders are made of heavy duty plastic and not susceptible to corrosion. The purchase of the larger sanders will also increase the sanding capacity of the 1-ton trucks used during snow/ice operations.

Staff has reviewed several sander boxes and have recommended the Boss 1.5 and 3 yard poly spreader VBX (Attachment 3).

Spreader stands

One of the challenges our maintenance crews have historically faced is the excessive time needed to “load” a sand spreader into the dump trucks in preparation for a snow/ice event as well as the time required to remove a spreader from a truck in order to use the dump portion of the truck to pick materials during an event. The spreader stands would significantly increase the prep and turn-a-round time for the maintenance crews to be “ready” for snow/ice as well as increase the safety and man hours since the stands do not require a typical 3-man operation using a loader to lift and set in the trucks.

Staff has reviewed several sander spreader stands and have recommended the SaltDogg galvanized spreader stands (Attachment 4).

Alternatives

Council could decide to not approve the equipment purchase or modify the recommended purchases.

Financial Impact

There is adequate fund balance in the Surface Water Utility, Marina Fund, and General Fund to support the purchases. Staff has the option of purchasing the excavator on a 4-year term at 0% interest in order to reduce the initial capital outlay. Administration will review this option if Council approves the proposed motions and use the best purchase strategy for the City.

Recommendation

Staff recommends adoption of the motions.

Concurrence:

The Finance, Legal, Marina and Public Works Departments concur.

THIS PAGE LEFT INTENTIONALLY BLANK

KOBELCO

167

SK45SRX-6E/SK55SRX-6E

Attachment #1

MINI
EXCAVATORS

SK45SRX
SK55SRX



DRIVEN BY
PASSION

167



City of Des Moines
2255 S 223rd Ave
Des Moines, WA 98198

3/12/2019

KOBELCO SK55SRX-6E

Machine Specifications:

Cab:	Base Machine Cab W/ Heater, AC & 2-way dozer blade	\$57,825.00
Seat:	Standard Seat	
Excavator Arm:	Standard Arm 5'7" With Thumb and Bucket Cylinder	
Boom:	Standard Mono Boom	
Track:	Rubber Tracks	
Coupler:	Werk-Brau Pin Grabber QC	
Thumb:	Werk-Brau Direct Link Thumb	
Bucket:	Werk-Brau 12" Dig Bucket	
Bucket:	Werk-Brau 24" Dig Bucket	
Machine Details:	Additional Counter-Weight	
	Standard Nibbler/Breaker proportional joystick control	
	Thumb Cylinder Bracket	
	Hand Control Pattern Changer	
	Rearview Mirror	
	Travel Alarm	

Optional Attachments:

Bucket:	Werk-Brau 48" Cleanout Bucket	\$1,365.00
Pins:	Set of Pins for Buckets	\$325.00

Warranty:	Kobelco Limited 3 year, 3,000 hrs. (Extended available)
Terms of Sale:	TBD
Lead Time:	TBD

Quote valid for 60 days, subject to availability to be confirmed at time of order

TOTAL PRICE BEFORE TAX:	\$57,825.00
--------------------------------	--------------------

1. The above Quoted Price(s) are subject to change without notice, and the price in effect at the time of order will apply.
2. The above Quoted Price (s) do not include any applicable state and local taxes.
3. All orders to purchase or lease based on this quotation shall be subject to acceptance by Orion Equipment and all sales or leases are subject to Standard Terms, Conditions and Warranties on Orion Equipment commercial forms.
4. Price (s) are quoted EXW-Orion Equipment (Seattle | Vancouver WA)

Sales Quoted Submitted by: Troy Grant

tax 5,784.50
63,609.50

an Ameridian Industries LLC business

18060 Des Moines Memorial Drive
Seattle WA 98148

3909 NW Fruit Valley Road
Vancouver WA 98660

Telephone 800 280 8124 Fax 206 244 5299



16TL Super Duty Tilt Bed Equipment Trailer

The 16TL Super Duty Tilt Bed Equipment Trailer from Big Tex Trailers is a stationary platform tilt deck trailer that has a four foot stationary deck on the front (six feet on the 22 length). Like the 14TL, this model is designed to haul medium duty, low profile equipment.

SPECS...

MODEL	WEIGHT	DESCRIPTION
16TL-22	5,000#	83" x 22' (16' + 6') Super Duty Tilt Bed Trailer
16TL-22GN	5,800#	83" x 22' (16' + 6') Super Duty Gooseneck Tilt Bed Trailer

& FEATURES

GROMMET MOUNT SEALED LIGHTING

LED lighting is brighter and lasts longer. LED lighting is mounted on the side of the frame or in protected channels, with access to junctures.

L.E.D. LIGHTING PACKAGE

17.5" RADIAL TIRES

EZ LUBE HUBS

to maintain and completely submersible with no disassembly required.

DEXTER BRAND TORSION AXLES

Dexter Axles outperform all other torsion axles. They are safe and automatically adjust to proper

NEV-R-ADJUST ELECTRIC BRAKES ON ALL HUBS

THE 16TL ALSO COMES EQUIPPED WITH:

- Adjustable 2-5/16" Demco Coupler in Channel
- Rubrail and Stake Pockets Along Sides
- (6) 5/8" Surface Mount D-Rings On Top of Frame
- Adjustable 2-5/16" Demco EZ Latch Coupler
- Fold Back/Wrap Tongue
- 12,000# Drop Leg Jack-Side Wind
- Dual Jacks & Front Toolbox on Gooseneck Model
- Fabricated Front Stop Rail
- Dexter D8ON 8,000# Torsion Axles
- Nev-R-Adjust Electric Brakes on All Hubs
- Cambered, Oil Bath Axles
- Complete Break-A-Way System w/Charger
- Zip Breakaway Cable
- 14 Ga. Double Square Bore Diamond Plate Fenders (Removable)
- Single-Side, EZ Pedal Locking Mechanism
- Stationary Front Deck for Added Versatility
- Unique Two Piece Main Frame
- Full 83" Wide Bed Between Fenders
- Tilt Platform is 75" Wide
- Hydraulic Dampening Cylinder w/ Valve Control
- 1/4" Diamond Plate Knife Edge on Rear
- Storage Tray in Tongue Area
- Grommet Mount Sealed Lighting
- L.E.D. Lighting Package
- Sealed Modular Wiring Harness
- 17.5" Radial Tires
- 5/8" Wheel Studs
- Spare Tire Mount (Front)

Big Tex Trailers reserves the right to change price, design, material and/or specifications without notice or obligation.

OPTIONAL EQUIPMENT

CATEGORY	DESCRIPTION
BODY	3/16" Diamond Plate Steel Floor
BODY	Blackwood Rubber Infused Floor
BRAKES	Hydraulic Surge Brakes 2 Axles w/Adjustable Demco Actuator
CARGO CONTROL	Additional B40 5/8" D-Ring
CARGO CONTROL	Recessed D-Ring in Floor (Steel Floor Only)
COUPLER	Adjustable Pintle in Channel in Lieu of Coupler
TIRE/WHEEL	Spare Tire (ST215/75 R-17.5 LR-H)

John Blackburn

From: Trailers Northwest Sales <trailersnw@comcast.net>
Sent: Thursday, April 11, 2019 12:23 PM
To: John Blackburn; MetaLocator
Subject: Re: MetaLocator.com: New Contact

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

John

Per your request below, the 14TL will not hold 11k, it's only going to hold 10,540 for the 20' and the 22' it will be less. we currently have both in stock.

The 16TL would be more efficient with the weight you need to hold. I would recommend looking into this trailer, that way you have a little more payload vs the 14TL. See prices below, these are just standard set up trailers

16TL-20 \$9699

16TL-22 \$9899

Thank you,

Brittany

Trailers Northwest, Inc.
(425) 413-5956
18421 Maple Valley Hwy SE
Maple Valley, WA 98038

Payments can be made Visa, Debit, Cash or Check. Credit will be a 3% Surcharge.

M-F 8AM-5PM
Sat 9AM-3PM
www.trailersnorthwest.com

Contact Added On April 11, 2019 at 11:18 AM MetaLocator <info@metalocator.com> wrote:

A contact form has been submitted via Metalocator.com



JOHN DEERE

172

Quote Summary

Prepared For:

City Of Des Moines Community Development
21630 11th Ave S Ste D
Des Moines, WA 98198
Business: 206-870-7576

Prepared By:

Mike Korvas
Pacific Golf & Turf
1818 Bickford Avenue
Snohomish, WA 98290
Phone: 360-568-7798
mkorvas@pacificgolfturf.com

Quote Id: 19339872
Created On: 09 April 2019
Last Modified On: 15 April 2019
Expiration Date: 31 May 2019

Equipment Summary	Selling Price	Qty	Extended
JOHN DEERE XUV835M HVAC (MY19)	\$ 24,141.35 X	2 =	\$ 48,282.70
JOHN DEERE 1.82m (72 in.) Hydraulic V-Blade	\$ 3,937.50 X	2 =	\$ 7,875.00
Equipment Total			\$ 56,157.70

Quote Summary

Equipment Total	\$ 56,157.70
SubTotal	\$ 56,157.70
Sales Tax - (10.00%)	\$ 5,588.77
Est. Service Agreement Tax	\$ 0.00
Total	\$ 61,746.47
Down Payment	(0.00)
Rental Applied	(0.00)
Balance Due	\$ 61,746.47

Salesperson : X _____

Accepted By : X _____

172

Confidential



JOHN DEERE

173

Attachment #2

Selling Equipment

Quote Id: 19339872

Customer: CITY OF DES MOINES COMMUNITY DEVELOPMENT

JOHN DEERE XUV835M HVAC (MY19)

Hours:

Stock Number:

Code	Description	Qty
573DM	XUV835M HVAC (MY19)	2
Standard Options - Per Unit		
001A	US/Canada	2
0505	Build To Order	2
1008	Yellow Alloy Wheels Maxxis Bighorn Radial Tires	2
2008	High Performance Sport Seat - Black	2
2500	Green and Yellow	2
3001	Cargo Box with Paint and Reflectors	2
3101	Cargo Box Power Lift	2
4024	OSR - Cab Doors	2
4030	Black Roof	2
4155	Rear Bumper with Rear Cargo Box Fender Guards	2
4201	Front Brush Guard	2
6349	Less Winch	2

Dealer Attachments		
BM24726	Backup Alarm	2
BM26185	Beacon Light	2
BM25863	CV Guards - front & rear	2
BM26462	Floor Mats (2)	2
BM26265	Front Attachment Harness	2
BM26268	Front Attachment Harness (dash port)	2
BUC10608	Front Turn Signal Light Kit	2
BM26391	Horn Kit	2
BM26216	LED Work Lights (2 Lights)	2
BM26739	Rear Cab Attachment Harness	2
BM26477	Rear View Mirror	2
BUC10310	Side Mirrors (open station & cab doors)	2
BM22773	Tail Light Protectors	2
BM26390	Windshield Washer Kit	2



JOHN DEERE

174

Selling Equipment

Quote Id: 19339872

Customer: CITY OF DES MOINES COMMUNITY DEVELOPMENT

JOHN DEERE 1.82m (72 in.) Hydraulic V-Blade

Hours:

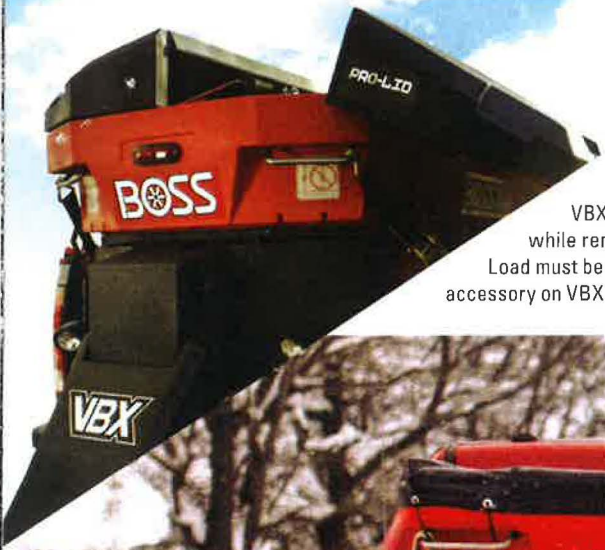
Stock Number:

Code	Description	Qty
801DM	1.82m (72 in.) Hydraulic V-Blade	2
Standard Options - Per Unit		
001A	US/Canada	2
3154	Undercarriage mount	2

175

PRO-LID

Weather-resistant, polyethylene hard cover protects deicing material inside the VBX spreader. The BOSS Pro-Lid® can be opened while remaining on the ground with most vehicles. Load must be level for proper operation. (Available as an accessory on VBX spreaders. Excludes VBX 3000.)



24

VBX 8000

2 cubic yards of capacity

VBX 6500

1.5 cubic yards of capacity

**VBX 9000**

3 cubic yards of capacity

*All images shown may include standard/optional equipment. Please consult your local BOSS Dealer for more information.

THIS PAGE LEFT INTENTIONALLY BLANK



Quote# 031819DM

03/19/2019

Price Quotation For

Northend Truck Equipment Inc.

14919 - 40th Ave. N.E.

Marysville, WA 98271

Ph: 360-653-6066 Fax: 360-653-0100

1-800-653-6066

Visit Our Web Site - www.northendtruck.com

Prepared For:	Contract Information:
Don Leadbetter	State of Washington Current Contract Information
City of Des Moines	Effective Date: 05-01-2018
206-941-3069	Contract number: 01117
Dleadbetter@desmoineswa.gov	Contract Title: Dump Bodies, Snow Plows Various Types, Controls & Services

Excel #	Item #	Dump Body Category C:	Qty.	Unit Total	Total
		OFF THE SHELF 2/3 YARD DUMP BODY FOR SNOW/ICE AND OPTION LIST			
107	20	Boss Hopper Spreader VBX 8000 - 8' V-Box Spreader	1	\$6,302.00	\$6,302.00
199	22	Boss Hopper Spreader VBX 9000 - 9' V-Box Spreader	0	\$7,223.00	\$0.00
		SubTotal			\$6,302.00
		Applicable Sales Tax Percentage at Delivery Location		10.00%	\$630.20
		Total Price with Tax Included			\$6,932.20

3yd

Notes:

- Please Specify Auger or Pintle Chain Drive At Time Of Order
- Equipment Shipped Direct To City For Customer Install
- Freight Included

Accepted: *Zack Andrews*

3/19/2019 Accepted: _____ Date: _____

Zack Andrews

NORTHEND TRUCK EQUIPMENT INC.

Don Leadbetter

City of Des Moines

PO Number: _____

Thank You for your help on this, if you have any questions or need additional information
Please call or email me at 425-903-2207, ZackA@northendtruck.com

Sincerely,

NORTHEND TRUCK EQUIPMENT

Zack Andrews

Sales



Quote# 190410DM

04/10/2019

Price Quotation For

Northend Truck Equipment Inc.

14919 - 40th Ave. N.E.

Marysville, WA 98271

Ph: 360-653-6066 Fax: 360-653-0100

1-800-653-6066

Visit Our Web Site - www.northendtruck.com

Prepared For:

Don Leadbetter

City of Des Moines

206-941-3069

Dleadbetter@desmoineswa.gov

Contract Information:

State of Washington Current Contract Information

Effective Date: 05-01-2018

Contract number: 01117

Contract Title: Dump Bodies, Snow Plows Various Types, Controls & Services

Excel #	Item #	Dump Body Category C:	Qty.	Unit Total	Total
		OFF THE SHELF 2/3 YARD DUMP BODY FOR SNOW/ICE AND OPTION LIST			
194	17	Boss Hopper Spreader VBX 3000 - 12 Cu. Ft. Cpty.	1	\$4,228.00	\$4,228.00
195	18	Boss Hopper Spreader VBX 6500 -1.5 Cu. Yd. Cpty.	1	\$5,588.00	\$5,588.00
		SubTotal			\$9,826.00
		Applicable Sales Tax Percentage at Delivery Location		10.00%	\$982.60
		Total Price with Tax Included			\$10,808.60

Notes:

- Please Specify Auger or Pintle Chain Drive At Time Of Order for VBX 6500, VBX 3000 Auger Only
- Equipment Shipped Direct To City For Customer Install
- Freight Included

Accepted: *Zack Andrews*

4/10/2019 Accepted: _____ Date: _____

Zack Andrews

NORTHEND TRUCK EQUIPMENT INC.

Don Leadbetter

City of Des Moines

PO Number: _____

Thank You for your help on this, if you have any questions or need additional information

Please call or email me at 425-903-2207, ZackA@northendtruck.com

Sincerely,

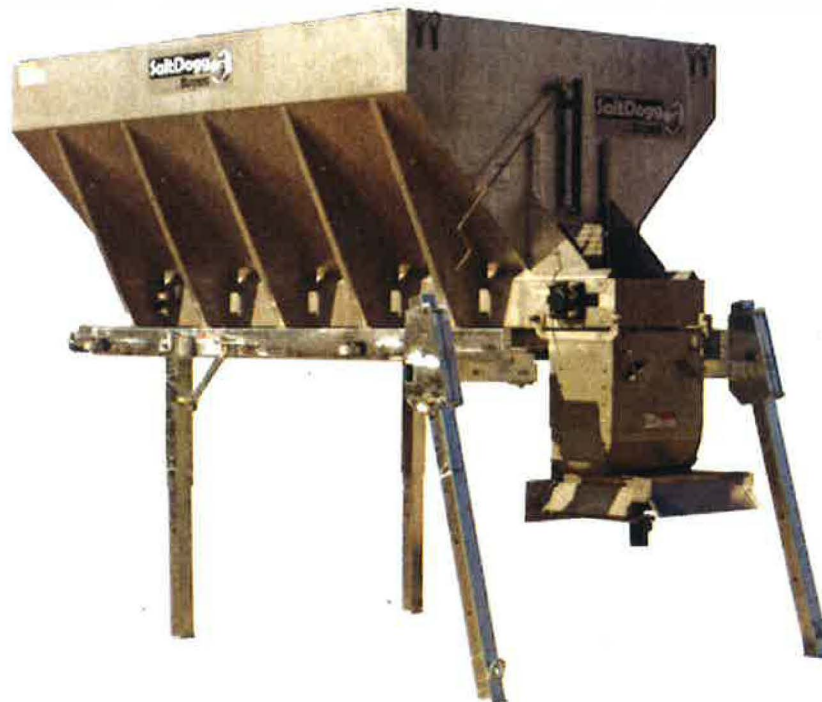
NORTHEND TRUCK EQUIPMENT

Zack Andrews

Sales



SALTDogg® GALVANIZED SPREADER STAND



Simplifies loading, unloading and storage of your full size municipal spreader.

Accommodates 10 ft to 15 ft spreaders, with or without pre-wet tanks.

Legs are adjustable to your bed height.

Built-in rollers make loading and unloading a spreader simple and smooth.

Sturdy structural steel construction.

Bolt-on or weld-on installation.

Buyers Products SaltDogg Galvanized Spreader Stand takes the hassle out of loading, unloading, and storing your 10 ft to 15 ft dump body spreader.

Built-in rollers on the sides and rear of the stand make it easy to line up the stand with your truck. The

**SALTDogg® SPREADER STANDS VIDEO**

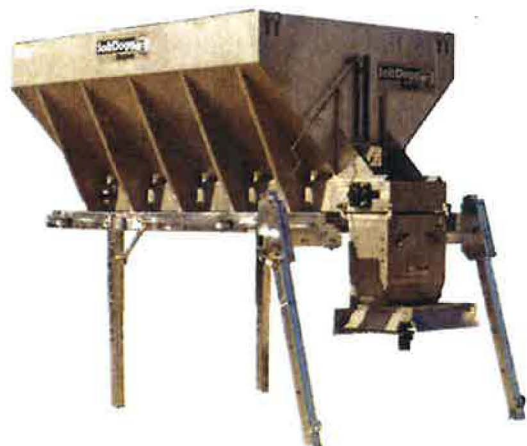
RELATED PRODUCTS

SaltDogg® 3.5-5 Cubic Yard Electric Conveyor Chain Spreader



SaltDogg® 7-10 Cubic Yard Hydraulic Auger Spreader



[Home](#) > [Snow Plow Parts](#) > [Salt Spreader Parts & Accessories](#) > [Stands](#) > **3027468**

Galvanized 10-11 ft. Salt Spreader Stand

Buyers 3027468

Online Price

\$3,031.25*\$1000.00
tax-shipping*

1

 Add To Cart

Click image above to enlarge.

Additional Shipping Required

Due to the weight and/or size of this product, additional shipping charges not charged within our web cart are required. We will contact you after your order has been received with the cost or you're welcome to contact us at orders@rcpw.com before placing the order to find out what the cost would be to your location.

Manufacturer*3,334.37
4,134.37*

THIS PAGE LEFT INTENTIONALLY BLANK

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Mary Gay, Sonju, and Van Gasken
Park Enhancements: Removal of non-park related
structures

ATTACHMENTS:

1. Mary Gay Park Enhancement plan
2. Sonju Park Enhancement plan
3. Van Gasken aerial view plan
4. Demolition cost estimates
5. CIP projects

FOR AGENDA OF: July 11, 2019

DEPT. OF ORIGIN: Public Works

DATE SUBMITTED: July 3, 2019

CLEARANCES:

- [X] Community Development SMC
 [] Marina N/A
 [X] Parks, Recreation & Senior Services SMC
 [X] Public Works PBC

CHIEF OPERATIONS OFFICER: DB

- [X] Legal ml
 [X] Finance OR
 [] Courts N/A
 [] Police N/A

**APPROVED BY CITY MANAGER
FOR SUBMITTAL:** [Signature]

Purpose and Recommendation

The purpose of this item is to seek City Council direction on park enhancements at three of the City's parks which include removal of residential structures that are not envisioned for future park functions. The structure removals will provide space for on-site park related parking. The three parks are Mary Gay, Sonju, and Van Gasken. These removals have been discussed with the Municipal Facilities Committee.

Suggested Motions:

Motion 1: "I move to direct administration to demolish the existing residential structure at Mary Gay Park (formerly Bundy property), in order to provide on-site parking and other amenities for the park".

Motion 2: "I move to direct administration to demolish two existing residential structures at Sonju Park, in order to provide on-site parking and other amenities for the park".

Motion 3: “I move to direct administration to demolish the existing garage structure at Van Gasken Park ”.

Motion 4: “I move to direct staff to make a budget amendment reflecting the park related enhancements”.

Background

Mary Gay Park

In early-2018 the City acquired Mary Gay Park (formerly the Bundy property) through donation by the Bundy family with the intent that the property be used as a community park. The property is located at 1616 South 223rd Street, is approximately 1.8 acres, and consists of three tax parcels. The center parcel has a house built in 1919, a detached garage built around 1990, and an older detached barn/shop. Following the transfer of the property to the City, staff visited the property several times to determine options with regard to short term use. The house is currently served by a septic system, but sewer is available in 223rd Street and there are sewer stub-outs to each of the three parcels. Following an investigation of the house, it was estimated that approximately \$30k to \$80k would need to be invested into the house (depending on the scope and Council direction) to bring it up to a condition that would be suitable for renting to the public due to years of deferred maintenance. There were also some concerns about the structural condition of the barn/shop. The detached garage was deemed to be in reasonable shape.

With the development of the 2019-2024 CIP, a project worksheet was developed and project budget of \$100,000 was earmarked for improvements to the house. In later 2018, the City opened bids on the 216th Segment 3 Project and the low bid came in higher than anticipated. This required some funding shifting in order to adequately cover the necessary contingency for project award. This funding shifting put the Bundy improvements on hold for 2019, so that the \$100,000 could be temporarily moved to the 216th Segment 3 project. To date the project contingency has not been needed.

At the June 27, 2019 Council meeting, the City Council approved an Urban Agriculture Use Agreement between the City and Highline College. This agreement gave the college use of the detached garage and permission to use a portion of the park outside of the critical area buffer as part of their Urban Agriculture program.

Sonju Park

Sonju Park is located at 24728 16th Avenue South. The overall size of Sonju Park is approximately 9.3 acres, but most of the park is wetland and critical areas. Since early 1997, the Sonju Park has been a part of the City’s Park system. The park has been primarily used as a community garden since 2011 on the portions of the property located outside of critical area buffers.

There are two residential structures and a detached barn on this property. The main house, which was built in 1941, consists of about 2,470 sq. ft., and is served by sewer. The City has been renting this house out for several years, and receives about \$1,000 per month in rent. The City received notice earlier this year that the current tenant will be leaving by July 15th. The main house has several deferred maintenance items including the need for a new roof, interior flooring, and interior wall repairs that would need to be addressed before the house could be rented again. There is also a small cottage style

structure of about 480 sq. ft. that is vacant and boarded up. This second structure has no foundation, and is in extremely poor condition.

Van Gasken Park

Van Gasken Park is located at 402 South 222nd St and is roughly .66 acres in size with two structures. A main house built in 1900 and a detached roughly 1,200 sq. ft. garage built around 1960. The City through cooperation and partnership with Forterra NW purchased the property in late 2017 with the hopes of providing a public park.

Currently there is a circular type driveway serving the property with a small area available for approximately two vehicles at the north end of the circular drive. The park enhancement plans currently being developed involve significant landscaping improvements.

Discussion

Mary Gay Park

The capital investment cost to rehabilitate the house at Mary Gay Park to a standard where it could be rented is extremely high. Even if the City were to receive market rent for the home, it would take at least 4 years and perhaps as many as 10 years, just to recuperate the capital investment costs – not to mention our ongoing operating and maintenance costs. Given this, and the fact that there is currently no parking available at Mary Gay Park, staff brought the enhancement and demolition concept to the Municipal Facilities meeting on March 28th, 2019 and was given direction to bring the concept forward to the full Council. Additionally, at the Municipal Facilities Committee meeting on June 27th, the staff re-affirmed the direction to bring forward an item on July 11th.

Staff is recommending that the house be removed, and the area replaced with a gravel parking area for park users (Attachment 1). As part of the demolition the septic tank/drain field would be abandoned, and fuel oil tank would be abated. In addition, due to the house's age, there is the likely need for asbestos abatement. As mentioned in the background section, there is a current sewer stub to the property if needed in the future for a permanent restroom structure if desired. The existing barn and garage would remain. Staff has prepared a rough cost estimate (Attachment 4) of approximately \$53,700 for demolition of the house.

Sonju Park

Just as with the house at Mary Gay Park, the capital investment cost to rehabilitate the house at Sonju Park to a standard where it could be rented is very high, and would take many years just to recuperate that cost, let alone our ongoing operating and maintenance costs. Given this, and the fact that there is currently very little parking available at Sonju Park, staff brought an enhancement and demolition concept to the Municipal Facilities meeting on March 28th, 2019 and was given direction to bring the concept forward to the full Council. Additionally, at the Municipal Facilities Committee meeting on June 27th, the staff re-affirmed the direction to bring forward an item on July 11th.

In place of the house, the concept (Attachment 2) would be to provide a gravel parking area to be used by visitors of the park and to maintain the utility connections. Currently there is very minimal on-site parking. The barn would still remain open for storage use as it currently is now. In addition, due to the age of the houses, there will likely be a need to properly abate asbestos. As mentioned in the background section, there is a current sewer stub to the property if needed in the future for a permanent restroom structure if desired. Staff has prepared a cost estimate (Attachment 4) of approximately \$54,100 for demolition of the house and abandoned cottage.

With the current renter leaving the house this month and the deferred maintenance costs at \$50,000 or more that would be needed to be invested into the property for a new renter, the timing was right to consider other options for the disposition of the structures moving forward.

A policy question for the Council is whether it is appropriate for the City be a landlord and property manager for residential structures on City property.

Van Gasken Park

Staff has prepared a rough cost estimate (Attachment 4) of approximately \$25,000 for demolition of the garage. In addition, due to the garage's age, there may be a need to properly abate asbestos if it is discovered.

Given certain sensitivities with the site, the proposal at this time would be to remove the structure only, and leave the garage slab in place. Removing the garage structure will help further prepare the site for the upcoming landscape project. Disposition of the garage slab will be addressed when the landscaping project moves forward. Given the other demolition work being proposed, there is an economy of scale to be gained by having the Van Gasken garage removed at this same time, verses later as part of a landscape contract.

Alternatives

The Council could decide to postpone the decision to remove the existing structures or only remove specific structures.

Financial Impact

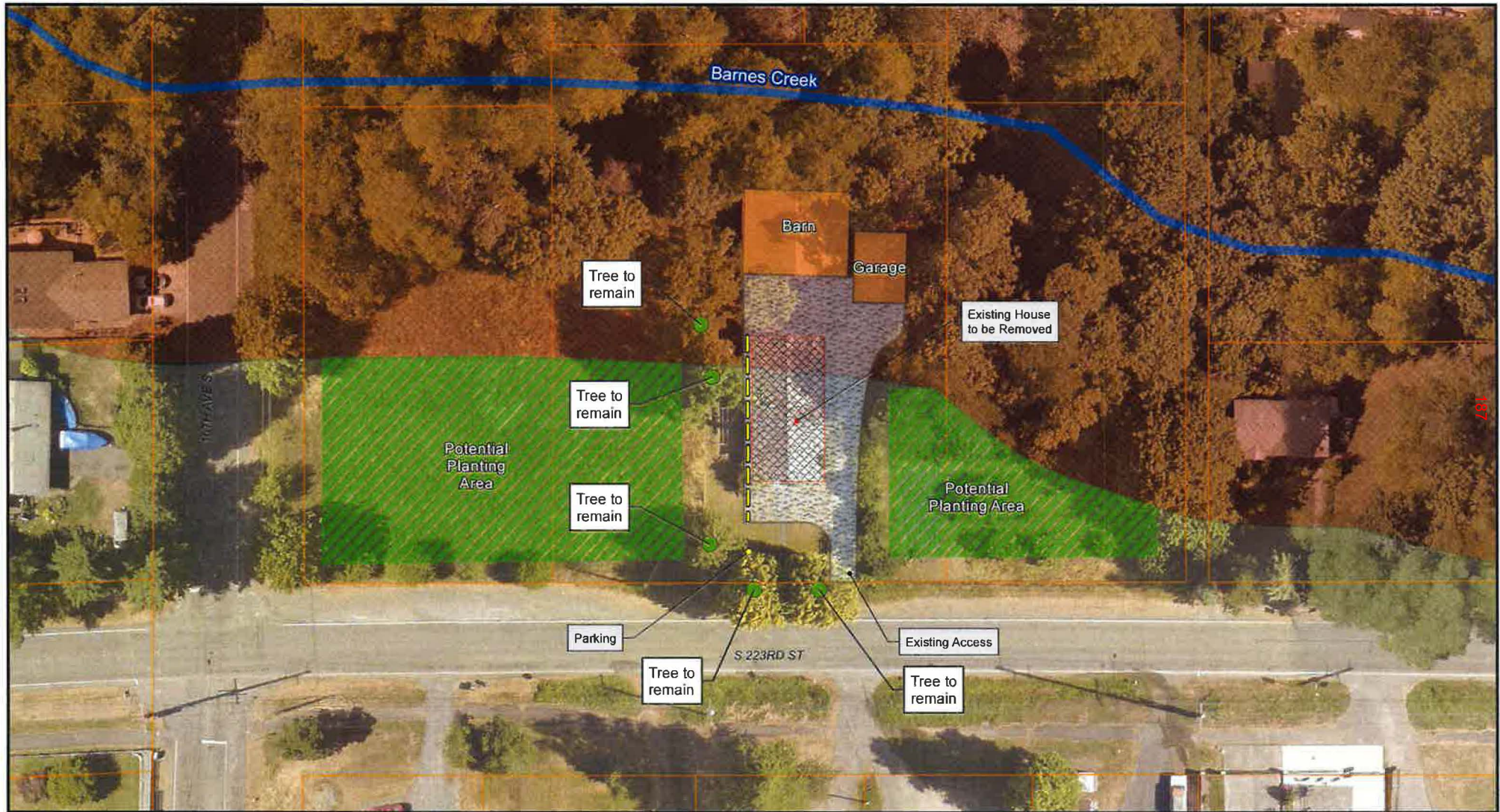
The existing structures are currently costing the city about \$1,500 per month in maintenance and operations expenses (utilities, security, vandalism, insurance, etc.).

There are adequate funds (one-time funds) and budgeted CIP projects (Attachment 5) available to cover the cost of removals.

Recommendation

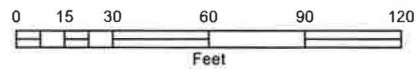
Staff recommends that the Council approve the suggested motions.

Mary Gay Park Enhancement Plan



City of Des Moines
GIS Services
©2019 City of Des Moines GIS
Map Generated Jul 03, 2019

 115' Creek Buffer



* This map is not suitable for site-specific analysis or for utility location *



THIS PAGE LEFT INTENTIONALLY BLANK

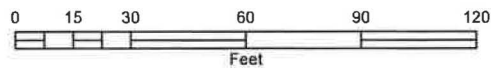
Sonju Park Enhancement Plan



City of Des Moines
GIS Services
©2019 City of Des Moines GIS
Map Generated: Jul 03, 2019



115' Creek Buffer



* This map is not suitable
for site-specific analysis
or for utility location *

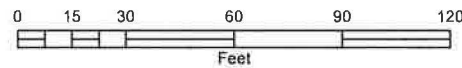


THIS PAGE LEFT INTENTIONALLY BLANK

Van Gasken Park Enhancement Plan



City of Des Moines
GIS Services
©2019 City of Des Moines GIS
Map Generated: Jul 03 2019



* This map is not suitable
for site-specific analysis
or for utility location *



THIS PAGE LEFT INTENTIONALLY BLANK

MARY GAY PARK (BUNDY HOUSE) DEMO BUDGET ESTIMATE

1616 SOUTH 223RD STREET

Tuesday, July 2, 2019

GEC DEMO COST ESTIMATE -->	\$20,350.00
CITY DEMO PERMIT -->	\$1,850.00
ASBESTOS STUDY -->	\$3,000.00
ASBESTOS ABATEMENT -->	\$10,000.00
UTILITY DISCONNECTS -->	\$0.00
ALARM DISCONNECTS -->	\$1,000.00
SEPTIC TANK/DRAIN FIELD ABANDONMENT -->	\$6,000.00
FUEL OIL TANK ABATEMENT -->	\$4,000.00
CONTINGENCY -->	\$5,000.00
PROJECT MANAGEMENT -->	\$2,500.00

TOTAL BUDGET ESTIMATE COST -->	\$53,700.00
--	--------------------

SONJU HOUSE DEMO BUDGET ESTIMATE

24728 16TH AVENUE SOUTH

Tuesday, July 2, 2019

GEC DEMO COST ESTIMATE -->	\$18,425.00
CITY DEMO PERMIT -->	\$1,675.00
ASBESTOS STUDY -->	\$2,000.00
ASBESTOS ABATEMENT -->	\$10,000.00
UTILITY DISCONNECTS -->	\$100.00
ALARM DISCONNECTS -->	\$1,000.00
CONTINGENCY -->	\$4,000.00
PROJECT MANAGEMENT -->	\$2,500.00

TOTAL BUDGET ESTIMATE COST -->	\$39,700.00
--	--------------------

SONJU COTTAGE DEMO BUDGET ESTIMATE

24728 16TH AVENUE SOUTH

Tuesday, July 2, 2019

GEC DEMO COST ESTIMATE -->	\$8,800.00
CITY DEMO PERMIT -->	\$800.00
ASBESTOS STUDY -->	\$500.00
ASBESTOS ABATEMENT -->	\$1,200.00
UTILITY DISCONNECTS -->	\$100.00
ALARM DISCONNECTS -->	\$0.00
CONTINGENCY -->	\$2,000.00
PROJECT MANAGEMENT -->	\$1,000.00

TOTAL BUDGET ESTIMATE COST -->	\$14,400.00
--	--------------------

VAN GASKEN GARAGE DEMO BUDGET ESTIMATE

402 SOUTH 222ND STREET

Tuesday, July 2, 2019

GEC DEMO COST ESTIMATE -->	\$10,450.00
CITY DEMO PERMIT -->	\$1,450.00
ASBESTOS STUDY -->	\$750.00
ASBESTOS ABATEMENT -->	\$4,000.00
UTILITY DISCONNECTS -->	\$2,500.00
ALARM DISCONNECTS -->	\$1,000.00
CONTINGENCY -->	\$3,000.00
PROJECT MANAGEMENT -->	\$1,500.00

TOTAL BUDGET ESTIMATE COST -->	\$24,650.00
--	--------------------

CITY OF DES MOINES
2020-2025 CAPITAL IMPROVEMENT PLAN - DRAFT
(Amount in Thousands)

Mary Gay Park

Project # 310.076

Summary Project Description:

Improvements to the house, barn, and sewer system serving the property.

CIP Category:

Park Facility Projects

Managing Department:

Parks, Recr & Sr Services

Justification/Benefits:

This property was recently donated to the City by the Bundy Estate to be a future park. Some initial improvements are necessary on the property.

PROJECT SCOPE			
Expenditures	Current Budget	Requested Change	Total Budget
Design	10	-	10
Land & Right of Way	-	-	-
Construction	80	-	80
Contingency	10	-	10
Total Expenditures	100	-	100

ANNUAL ALLOCATION							
Project to Date 12/31/18	Scheduled Year 2019	Plan Year 2020	Plan Year 2021	Plan Year 2022	Plan Year 2023	Plan Year 2024	Plan Year 2025
-	10	-	-	-	-	-	97
-	-	-	-	-	-	-	-
-	80	-	-	-	-	-	-
-	-	10	-	-	-	-	-
-	90	10	-	-	-	-	-

Funding Sources	Current Budget	Requested Change	Total Budget
Park in-Lieu	50	-	50
One Time Sales/B&O Tax	50	-	50
Total Funding	100	-	100

Project to Date 12/31/18	Scheduled Year 2019	Plan Year 2020	Plan Year 2021	Plan Year 2022	Plan Year 2023	Plan Year 2024	Plan Year 2025
-	50	-	-	-	-	-	-
-	40	10	-	-	-	-	-
-	90	10	-	-	-	-	-

OPERATING IMPACT			
Operating Impact	6 Year Total		
Revenue	-	-	-
Expenses	-	-	-
Net Impact	-	-	-

ANNUAL OPERATING IMPACT							
12/31/18	2019	2020	2021	2022	2023	2024	2025
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-

CITY OF DES MOINES
2020-2025 CAPITAL IMPROVEMENT PLAN
(Amount in Thousands)

Sonju Park - DRAFT

Project # 310.YYY

Summary Project Description:

Project will demolish the two existing residential structures and create interim on-site parking improvements

CIP Category:

Parks Facility Project

Managing Department:

Parks, Recr & Sr. Services

Justification/Benefits:

Currently, minimal on-site parking exists for the community garden. In addition, both residential structures need significant capital investment and they are not envisioned in the long term use of the park.

PROJECT SCOPE

Expenditures	Current Budget	Requested Change	Total Budget
Design	-	-	-
Land & Right of Way	-	-	-
Construction	-	48,100	48,100
Contingency	-	6,000	6,000
Total Expenditures	-	54,100	54,100

ANNUAL ALLOCATION

Project to Date 12/31/18	Scheduled Year 2019	Plan Year 2020	Plan Year 2021	Plan Year 2022	Plan Year 2023	Plan Year 2024	Plan Year 2025
	48,100						
	6,000						
-	54,100	-	-	-	-	-	-

Funding Sources

Funding Sources	Current Budget	Requested Change	Total Budget
General Fund	-	-	-
REET 2	-	-	-
One Time Tax	-	-	-
Unassigned City Funding	-	54,100	54,100
Total Funding	-	54,100	54,100

Project to Date 12/31/18	Scheduled Year 2019	Plan Year 2020	Plan Year 2021	Plan Year 2022	Plan Year 2023	Plan Year 2024	Plan Year 2025
	54,100						
-	54,100	-	-	-	-	-	-

OPERATING IMPACT

Operating Impact	6 Year Total
Revenue	-
Expenses	-
Net Impact	-

ANNUAL OPERATING IMPACT

12/31/18	2017	2020	2021	2022	2023	2024	2025
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-

CITY OF DES MOINES
2020-2025 CAPITAL IMPROVEMENT PLAN - DRAFT
(Amount in Thousands)

The Van Gasken Park

Project # 310.067

Summary Project Description:

Project will purchase a new City Park and make subsequent improvements to be determined.

CIP Category:

Parks Facility Project

Managing Department:

Parks, Recr & Sr Services

Justification/Benefits:

Open/Public park space is a highly valued asset for the City. Expanding the recreational and open space areas in the City is a high priority.

PROJECT SCOPE			
Expenditures	Current Budget	Requested Change	Total Budget
Design	50	113	163
Land & Right of Way	1,338	98	1,436
Construction	1,000	-	1,000
Contingency	50	(48)	2
Total Expenditures	2,438	163	2,601

ANNUAL ALLOCATION							
Project to Date 12/31/18	Scheduled Year 2019	Plan Year 2020	Plan Year 2021	Plan Year 2022	Plan Year 2023	Plan Year 2024	Plan Year 2025
10	153	-	-	-	-	-	-
178	1,258	-	-	-	-	-	-
-	-	-	1,000	-	-	-	-
2	-	-	-	-	-	-	-
190	1,411	-	1,000	-	-	-	-

Funding Sources	Current Budget	Requested Change	Total Budget
Park in-Lieu	758	475	1,233
One Time Sales/B&O Tax	-	-	-
CFT Grant (Secured)	594	-	594
RCO Grant (Secured)	1,086	(312)	774
Total Funding	2,438	163	2,601

Project to Date 12/31/18	Scheduled Year 2019	Plan Year 2020	Plan Year 2021	Plan Year 2022	Plan Year 2023	Plan Year 2024	Plan Year 2025
93	640	-	500	-	-	-	-
97	(97)	-	-	-	-	-	-
-	594	-	-	-	-	-	-
-	274	-	500	-	-	-	-
190	1,411	-	1,000	-	-	-	-

OPERATING IMPACT			
Operating Impact	6 Year Total		
Revenue	-	-	-
Expenses	-	-	-
Net Impact	-	-	-

ANNUAL OPERATING IMPACT							
12/31/18	2017	2020	2021	2022	2023	2024	2025
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-

THIS PAGE LEFT INTENTIONALLY BLANK

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Draft Ordinance No. 19-024: Des Moines Memorial Drive South and South 200th Intersection Improvement Project Authorization for Condemnation

ATTACHMENTS:

1. Draft Ordinance 19-024
2. Letters to Property Owners

FOR AGENDA OF: July 11, 2019

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: July 3, 2019

CLEARANCES:

- ☐ Community Development _____
- ☐ Marina _____
- ☐ Parks, Recreation & Senior Services _____
- ☒ Public Works RBC

CHIEF OPERATIONS OFFICER: DJS

- ☒ Legal MA
- ☒ Finance OK
- ☐ Courts _____
- ☐ Police _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: *[Signature]*

Purpose and Recommendation

The purpose of this agenda item is for the City Council to authorize the City Attorney to begin condemnation proceedings to acquire necessary right of way or easements on parcels 391740-0280 (vacant land) and 391740-0281 (110 S. 200th Street) in Des Moines for construction of the Des Moines Memorial Drive South and South 200th Intersection Improvement Project.

Suggested Motion

Motion 1: “I move to suspend Council Rule 26(a) in order to enact Draft Ordinance 19-024 on first reading.”

AND

Motion 2: “I move to enact Draft Ordinance No 19-024, directing the City Attorney to prosecute the eminent domain action in King County Superior Court in a manner provided by law to condemn, take damage and appropriate real properties in a manner necessary to carry out the provisions of Draft Ordinance No 19-024.”

Background

The City of SeaTac will be constructing improvements at the intersection of Des Moines Memorial Drive and South 200th Street. This intersection improvement project will construct left turn lanes at all four legs of the intersection and a right turn lane on the east leg. The west leg of the intersection is located in the City of Des Moines, while the north, south and east legs are located within the City of SeaTac. Sidewalks and bike lanes will be extended to the beginning of the turn pocket transitions or approximately 300-feet in each direction. The existing span wire traffic signal will be replaced with a mast arm system and the street lighting will be upgraded. Curb ramps and pedestrian signals will be upgraded to current ADA and APS standards and the storm drainage system will be reconstructed, including a stormwater drainage extension solely benefiting the City of Des Moines.

Property owners (3) have been properly notified of this action by letter (**Attachment 2**) as required by RCW 8.25.290.

Discussion

In order to construct the project, it is necessary for SeaTac to acquire certain property rights within the project area. Over the past several months, SeaTac has been able to reach a resolution with most affected property owners. However, there are two parcels in Des Moines in which SeaTac has not been able to acquire the necessary right-of-way or easements, and thus eminent domain (condemnation) may be necessary. State law does not allow the City of SeaTac to acquire right-of-way located in another City through eminent domain, so condemnation must be initiated by Des Moines.

Alternatives

The final design and alignment for the roadway requires these properties. Other alternatives are currently unavailable.

Financial Impact

Pursuant to agreement, the City of SeaTac is covering the acquisition costs.

Recommendation

Staff recommends the Council approve the proposed motion.

DRAFT ORDINANCE NO. 19-024**CITY ATTORNEYS FIRST DRAFT**

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to the acquisition by eminent domain of certain property in the City of Des Moines; describing the public convenience, use and necessity of such property; providing for the condemnation, appropriation and taking of such land, including the mode of payment of cost of acquisition; and directing the City Attorney to prosecute such action in King County Superior Court.

WHEREAS, there exists in the City of Des Moines certain properties legally described in section 1 of this Ordinance, and

WHEREAS, the City of Des Moines ("Des Moines") and the City of SeaTac ("SeaTac") have partnered to construct improvements at the intersection of South 200th Street and Des Moines Memorial Drive South ("Project"); and

WHEREAS, SeaTac is responsible for design, construction, and right-of-way acquisition for the Project, as outlined in the Interlocal Agreement as referenced below; and

WHEREAS, Des Moines and SeaTac have entered into an Interlocal Agreement executed in May of 2019, for construction of the Project, since the Project boundaries are located in both Des Moines and SeaTac; and

WHEREAS, the City Council of the City of Des Moines intends to acquire the portions of properties described in Section 1 that are needed for the construction of the Project ("Property"), and

WHEREAS, SeaTac will make payment for the Property by the payment of "fair market value"; and

WHEREAS, if condemnation is required within Des Moines, state law requires that Des Moines be the lead Agency; and

WHEREAS, the Interlocal Agreement provides that Des Moines and SeaTac, through their respective City Attorney's Office, will determine the most advantageous and cost effective manner to prosecute any condemnation actions, and that SeaTac shall have final settlement authority for any Right-of-Way acquisitions associated with the Project; and

Draft Ordinance No. 19-024
Page 2 of 12

WHEREAS, the City Council finds that acquisition of the properties described in section 1 "Legal description" below is critical to construct the Project, and it is in the public interest to acquire such properties for public health, safety, welfare and transportation needs, and

WHEREAS, pursuant to chapter 8.12 RCW, Des Moines is empowered to condemn land and property for transportation purposes (RCW 8.12.030), and

WHEREAS, proper notice of planned final action was provided pursuant to RCW 8.25.290 prior to Council final action, and

WHEREAS, based upon the foregoing, the City Council finds that, pending the outcome of negotiations, the only alternative available for acquisition of properties described in section 1, or portions thereof, may be by eminent domain; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. Legal description. The real properties that are the subject of this Ordinance are legally described in Exhibit A-1 and Exhibit A-2, attached hereto.

Sec. 2. Public use and necessity. The public convenience, use and necessity demand the acquisition of the real property and/or temporary construction rights described in section 1 herein for the Project and for use by the public for transportation purposes.

Sec. 3. Condemnation of property. All lands, rights, privileges, and other property lying within the limits of the real property described in Section 1 herein are hereby condemned, appropriated, taken and/or damaged for the purposes described in Section 2 herein, only after just compensation has been made or paid into the court for the owner thereof in a manner provided by law.

Sec. 4. Costs of acquisition. The costs of the acquisition provided by this Ordinance shall be paid by the City of SeaTac pursuant to agreement and as may be provided by law.

Draft Ordinance No. 19-024
Page 3 of 12

Sec. 5. Authority of the City Attorney. The City Attorney is hereby authorized and directed to begin and prosecute the actions and proceedings in a manner provided by law to condemn, take, damage, and appropriate the real property necessary to carry out the provisions of this Ordinance. In conducting such condemnation proceedings, the City Attorney is hereby authorized to enter into stipulations for the purpose of minimizing damages. The City Attorney is also authorized to enter into an agreement with the City of SeaTac City Attorney's Office to assist with carrying out the actions authorized by this Ordinance.

Sec. 6. Severability - Construction

(1) If a section, subsection, paragraph, sentence, clause or phrase of this Ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction and decision shall not affect the validity of the remaining portions of this Ordinance.

(2) If the provisions of this Ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this Ordinance is deemed to control.

Sec. 7. Effective Date. This Ordinance shall take effect and be in full force five (5) days after its passage, approval and publication in accordance with law.

PASSED BY the City Council of the City of Des Moines, Washington, this _____ day of _____, 2019 and signed in authentication thereof this _____ day of _____, 2019.

M A Y O R

APPROVED AS TO FORM:

City Attorney

Draft Ordinance No. 19-024
Page 4 of 12

ATTEST:

City Clerk

Published: _____

Draft Ordinance No. 19-024
Page 5 of 12

Exhibit A-1: Knudson Temporary Construction Easement

EXHIBIT "A"

Parcel No.: 3917400281
Owners Name: Susan Knudson
Temporary Construction Easement

LEGAL DESCRIPTION OF GRANTOR'S PARCEL

KNIGHT'S SECOND ADD TO DES MOINES W 85 FT OF VAC LOTS 1 THRU 8 BLK 15 LESS POR THOF LY WITHIN S 200TH ST TGW E HALF OF VAC 11TH AVE S LY SLY OF C/L OF S 199TH ST PER SC #84-2-01654-0 & NLY OF LINE 42 FT N OF & PLL WITH C/L OF S 200TH ST TGW S HALF OF VAC S 199TH ST LV WLY OF NLY PRODUCTION OF E LINE OF W 85 FT OF SD LOT 1 LESS POR THOF DAF: BEG AT INTSN OF C/L 11TH AVE S & OF C/L S 199TH ST TH S 89-50-54 E 115.00 FT ALG SD C/L S 199TH ST TO PT OF INTSN WITH NLY PRODUCTION OF E LINE OF W 85 FT LOT 1 BLK 15 KNIGHT'S SECOND ADD TO DES MOINES TH S 00-09-06 W ALG SD NLY PRODUCTION DIST 15.00 FT TO S LINE OF N 15.00 FT OF S HALF S 199TH ST TH ALG SD S LINE N 89-50-54 W 115.00 FT TO C/L 11TH AVE S TH N 00-09-06 E 15.00 FT ALG SD C/L TO POB -- AS DELINEATED PER KING CO BNDRY LINE ADJUSTMENT NO S920012 APPROVED 13 FEB 1992

PLat Block: 15

Plat Lot: POR 1 THRU 8

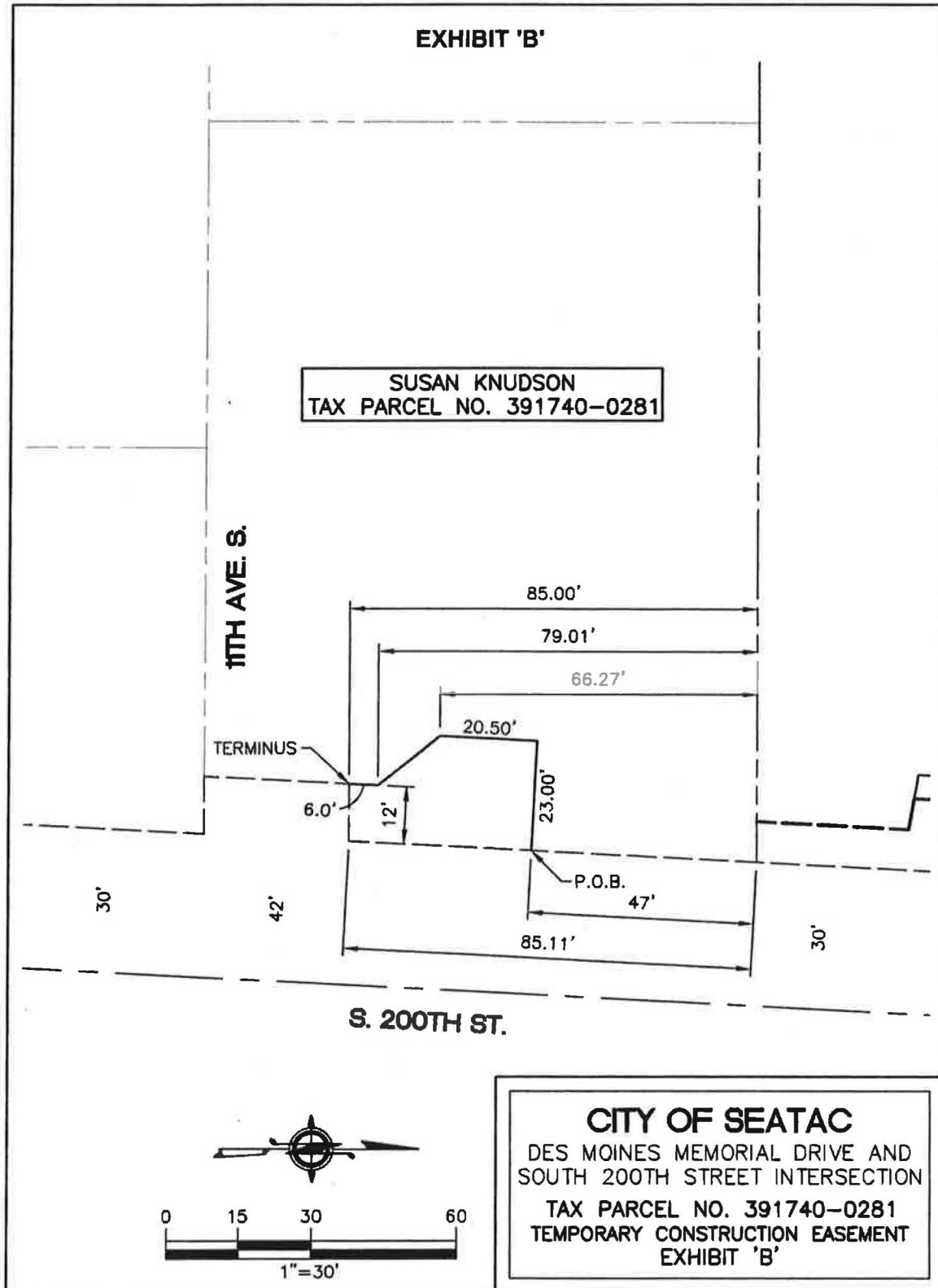
LEGAL DESCRIPTION OF EASEMENT AREA

That portion of said Parcel described above lying South of the following described line:

BEGINNING at a point on the Southerly line of the Parcel described above 47.00 feet Westerly of the Easterly line of said Parcel, measured perpendicular to said Easterly line;
THENCE Northerly to a point 47.00 feet Westerly of the Easterly line of said Parcel and 23.00 feet Northerly of the Southerly line of said Parcel, both of which are measured perpendicular to their respective line;
THENCE Westerly to a point 66.27 feet Westerly of the Easterly line of said Parcel and 23.00 feet Northerly of the Southerly line of said Parcel, both of which are measured perpendicular to their respective line;
THENCE Southwesterly to a point 79.01 feet Westerly of the Easterly line of said Parcel and 12.01 feet Northerly of the Southerly line of said Parcel, both of which are measured perpendicular to their respective line;
THENCE Westerly to a point on the Southerly line of said Parcel 85.11 feet Westerly of the Easterly line of said Parcel and the TERMINUS of the herein described line.

Contains: 753.5 Square Feet, more or less.

Draft Ordinance No. 19-024
Page 6 of 12



Draft Ordinance No. 19-024
Page 7 of 12

Exhibit B-1: Hanning Right-of-Way Acquisition

EXHIBIT "A"

Parcel No.: 3917400280
Owners Name: Jack & Bettie Hanning & Harmina C. Heroux
Right of Way Acquisition

LEGAL DESCRIPTION OF GRANTOR'S PARCEL

THE NORTH 70 FEET OF VACATED BLOCK 15, EXCEPT THE WEST 85 FEET THEREOF, AND THE NORTH 70 FEET OF VACATED BLOCK 16, LYING WEST OF THE WEST LINE OF DES MOINES WAY;

ALL IN KNIGHT'S SECOND ADDITION TO DES MOINES, "VACATED", ACCORDING TO THE PLAT RECORDED IN VOLUME 5 OF PLATS, PAGE 3, RECORDS OF KING COUNTY, WASHINGTON.

TOGETHER WITH VACATED ALLEY ADJOINING SAID NORTH 70 FEET OF SAID BLOCK 15 AND 16;

ALSO THAT PORTION OF BLOCKS 15 AND 16, KNIGHT'S SECOND ADDITION TO DES MOINES, "VACATED", ACCORDING TO THE PLAT RECORDED IN VOLUME 5 OF PLATS, PAGE 3, RECORDS OF KING COUNTY, WASHINGTON, LYING WESTERLY OF DES MOINES WAY AND NORTHERLY OF SOUTH 200TH STREET;

EXCEPT THE NORTH 70 FEET,

AND EXCEPT THE WEST 85 FEET;

TOGETHER WITH ADJOINING VACATED ALLEY LYING SOUTH OF SAID NORTH 70 FEET.

TOGETHER WITH THE SOUTH HALF OF VACATED SOUTH 199TH STREET LYING EASTERLY OF THE NORTHERLY EXTENSION OF THE EAST LINE OF THE WEST 85 FEET OF LOT 1, BLOCK 15 AND WESTERLY LINE OF 42 FEET (MEASURED AT THE RIGHT ANGLE) WEST OF AND PARALLEL WITH THE CENTER LINE OF DES MOINES WAY SOUTH;

LEGAL DESCRIPTION OF ACQUISITION AREA

That portion of said Parcel described above lying South and East of the following described line:

BEGINNING at a point on the Westerly line of said Parcel and 8.50 feet Northerly of the Southerly line of said Parcel, measured perpendicular to said Southerly line;
THENCE Easterly, parallel with said Southerly line to a point 29.00 feet Westerly of the Easterly line of said parcel, measured perpendicular to said Easterly line;
THENCE Northeasterly, parallel with said Easterly line to a point 15.00 feet Northerly of the Southerly line of said Parcel and 29.00 feet Westerly of the Easterly line of said Parcel, both of which are measured perpendicular to their respective line;

Draft Ordinance No. 19-024
Page 8 of 12

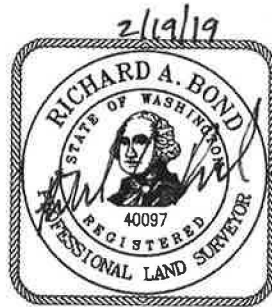
THENCE Easterly, parallel with said Southerly line to a point 10.50 feet Westerly of the Easterly line of said Parcel measured perpendicular to said Easterly line;

THENCE Northerly, parallel with said Easterly line to a point 10.50 feet Westerly of the Easterly line of said Parcel and 49.32 feet Northerly of the Southerly line of said Parcel, both of which are measured perpendicular to their respective line;

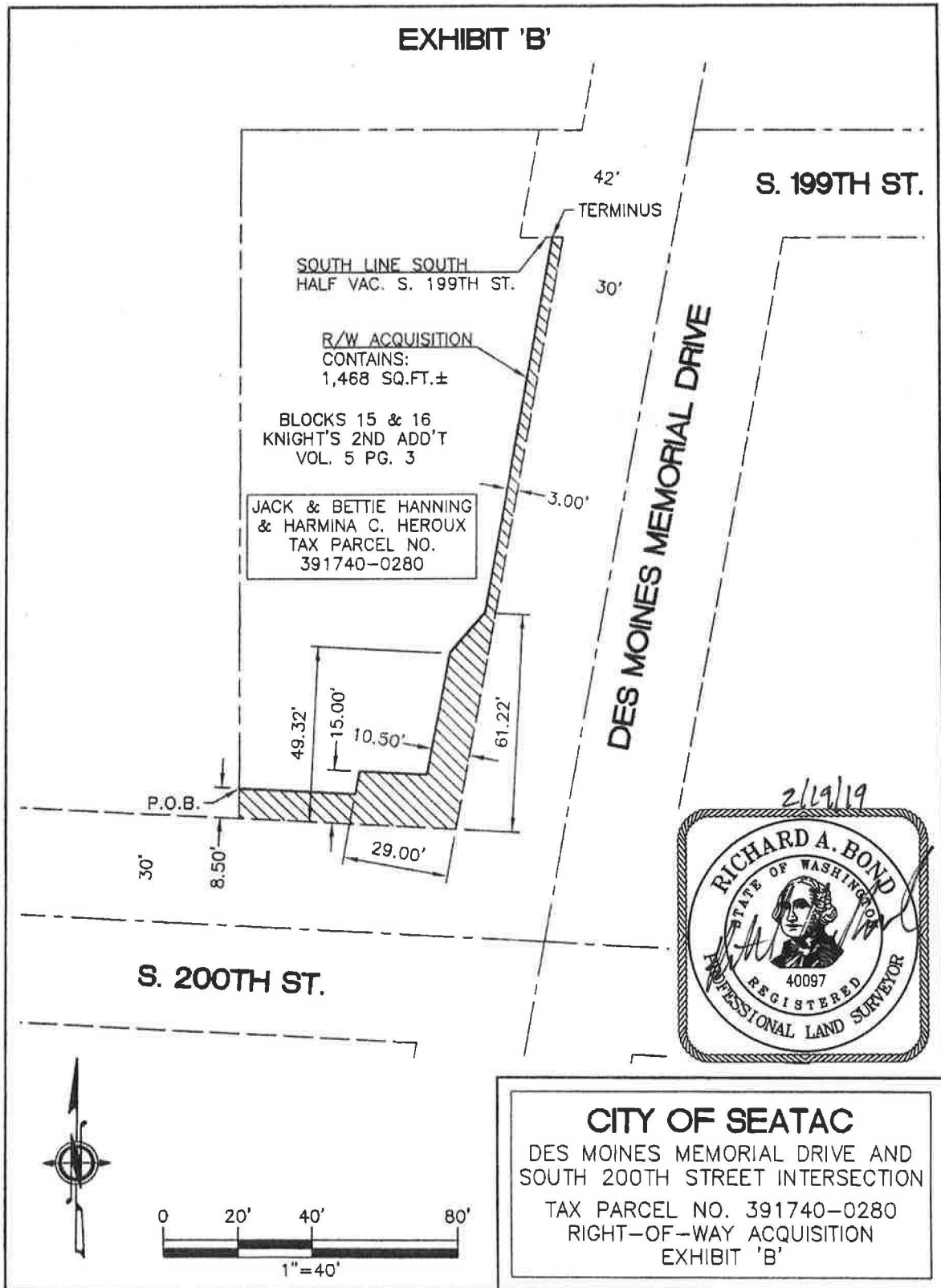
THENCE Northeasterly to a point 3.00 feet Westerly of the Easterly line of said Parcel and 61.22 feet Northerly of the Southerly line of said Parcel, both of which are measured perpendicular to their respective line;

THENCE Northeasterly, parallel with said Easterly line to a point on the South line of the South half of Vacated South 199th Street and the TERMINUS of the herein described line.

Contains: 1,468 Square Feet, more or less.



Draft Ordinance No. 19-024
Page 9 of 12



Draft Ordinance No. 19-024
Page 10 of 12

Exhibit B-2: Hanning Temporary Construction Easement

EXHIBIT "A"

Parcel No.: 3917400280
Owners Name: Jack & Bettie Hanning & Harmina C. Heroux
Temporary Construction Easement

LEGAL DESCRIPTION OF GRANTOR'S PARCEL

THE NORTH 70 FEET OF VACATED BLOCK 15, EXCEPT THE WEST 85 FEET THEREOF,
AND THE NORTH 70 FEET OF VACATED BLOCK 16, LYING WEST OF THE WEST LINE OF
DES MOINES WAY;

ALL IN KNIGHT'S SECOND ADDITION TO DES MOINES, "VACATED", ACCORDING TO THE
PLAT RECORDED IN VOLUME 5 OF PLATS, PAGE 3, RECORDS OF KING COUNTY,
WASHINGTON.

TOGETHER WITH VACATED ALLEY ADJOINING SAID NORTH 70 FEET OF SAID BLOCK 15
AND 16;

ALSO THAT PORTION OF BLOCKS 15 AND 16, KNIGHT'S SECOND ADDITION TO DES
MOINES, "VACATED", ACCORDING TO THE PLAT RECORDED IN VOLUME 5 OF PLATS,
PAGE 3, RECORDS OF KING COUNTY, WASHINGTON, LYING WESTERLY OF DES
MOINES WAY AND NORTHERLY OF SOUTH 200TH STREET;

EXCEPT THE NORTH 70 FEET,

AND EXCEPT THE WEST 85 FEET;

TOGETHER WITH ADJOINING VACATED ALLEY LYING SOUTH OF SAID NORTH 70 FEET.

TOGETHER WITH THE SOUTH HALF OF VACATED SOUTH 199TH STREET LYING
EASTERLY OF THE NORTHERLY EXTENSION OF THE EAST LINE OF THE WEST 85 FEET
OF LOT 1, BLOCK 15 AND WESTERLY LINE OF 42 FEET (MEASURED AT THE RIGHT
ANGLE) WEST OF AND PARALLEL WITH THE CENTER LINE OF DES MOINES WAY
SOUTH;

LEGAL DESCRIPTION OF EASEMENT AREA

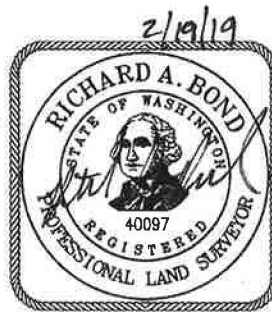
That portion of said Parcel described above included within a strip of land 5.00 feet wide, lying
North and West of the following described line:

COMMENCING at a point on the Westerly line of said Parcel and 8.50 feet Northerly of the
Southerly line of said Parcel, measured perpendicular to said Southerly line;
THENCE Easterly, parallel with said Southerly line to a point 29.00 feet Westerly of the Easterly
line of said parcel, measured perpendicular to said Easterly line;
THENCE Northeasterly, parallel with said Easterly line to a point 15.00 feet Northerly of the
Southerly line of said Parcel and 29.00 feet Westerly of the Easterly line of said Parcel, both of

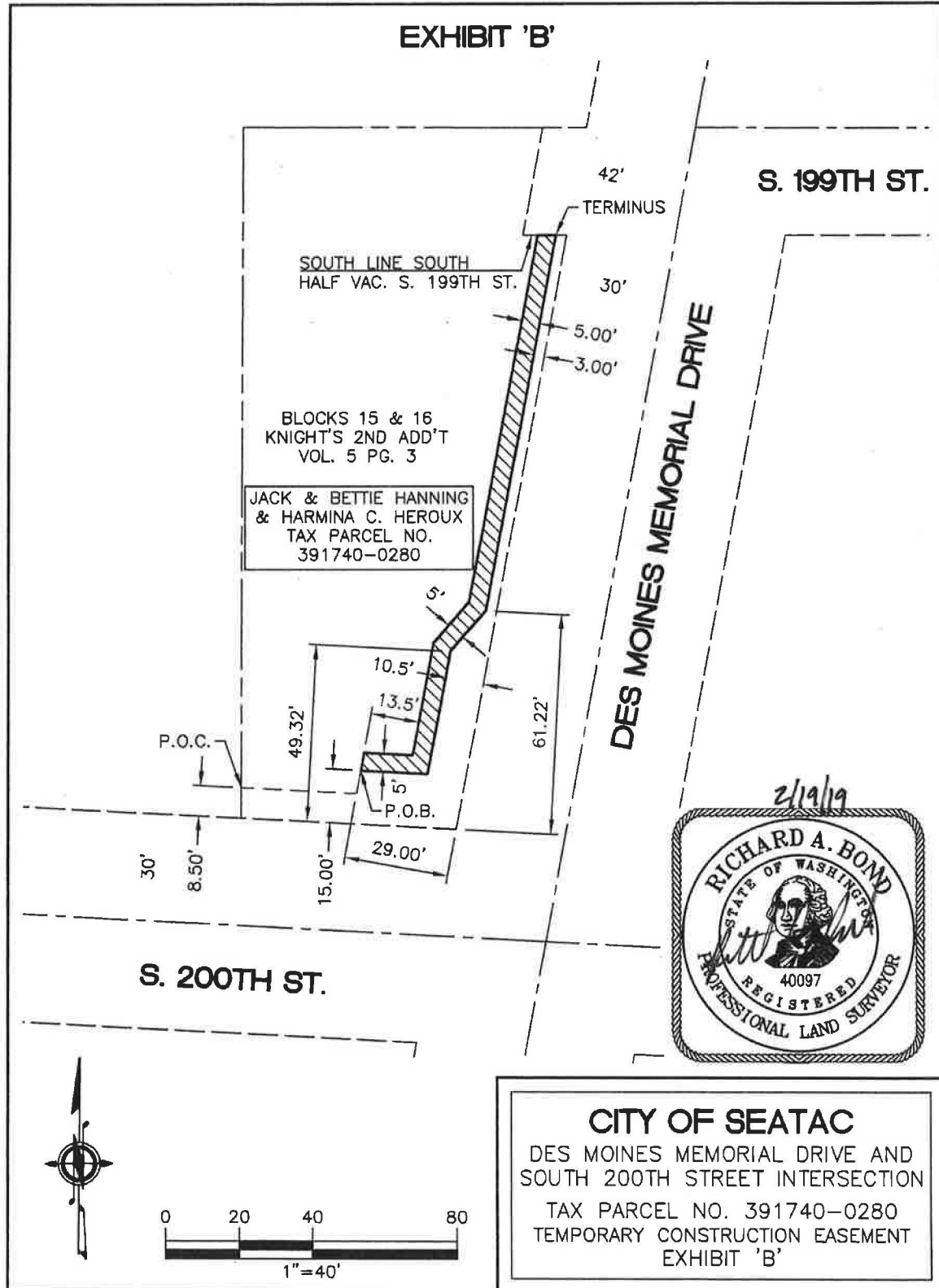
Draft Ordinance No. 19-024
Page 11 of 12

which are measured perpendicular to their respective line, said point being the POINT OF BEGINNING of the herein described line;
THENCE Easterly, parallel with said Southerly line to a point 10.50 feet Westerly of the Easterly line of said Parcel measured perpendicular to said Easterly line;
THENCE Northerly, parallel with said Easterly line to a point 10.50 feet Westerly of the Easterly line of said Parcel and 49.32 feet Northerly of the Southerly line of said Parcel, both of which are measured perpendicular to their respective line;
THENCE Northeasterly to a point 3.00 feet Westerly of the Easterly line of said Parcel and 61.22 feet Northerly of the Southerly line of said Parcel, both of which are measured perpendicular to their respective line;
THENCE Northeasterly, parallel with said Easterly line to a point on the South line of the South half of Vacated South 199th Street and the TERMINUS of the herein described line.

Contains: 849 Square Feet, more or less.



Draft Ordinance No. 19-024
Page 12 of 12





June 25, 2019

VIA CERTIFIED MAIL; RETURN RECEIPT

Bettie Hanning
 3030 64th Avenue SW #B
 Seattle, WA 98116

**RE: Des Moines Memorial Drive South and South 200th Street Intersection Improvement Project
 King County Tax Parcel No. 391740-0280 (See attached.)**

Dear Ms. Hanning:

The City of Des Moines has partnered with the City of SeaTac for construction of the Des Moines Memorial Drive South and South 200th Street Intersection Improvement Project ("Project"). The City of SeaTac is the lead agency for this road improvement Project, and construction and these improvements will occur in both cities. More specifically, this Project consists of constructing a traffic signal system at the intersection of Des Moines Memorial Drive South and South 200th Street, including turn lanes, curbs, gutters, sidewalk, bike lanes, storm drainage, conversion of utilities to underground, utility lines, street lighting, and paving.

On July 11, 2019, the Des Moines City Council will be considering an Ordinance authorizing the City of Des Moines to acquire through condemnation all remaining property rights located in the City for the Project as of the date of this letter through Eminent Domain (Condemnation). It is necessary to take this action because the City of SeaTac, as lead agency, has been unable to resolve the outstanding conflicts to the title of the above-referenced property.

In compliance with RCW 8.25.290, the City is required to provide you with formal written notice before the City Council takes "final action" authorizing condemnation of property. The Ordinance authorizing acquisition through negotiation or condemnation will be on the City Council Agenda for approval at 7:00 p.m. on July 11, 2019. The Ordinance authorizes the City Attorney to use the City's Eminent Domain authority and will be considered as the Council's final action.

If you wish to attend this City Council meeting, the Council Chambers are located at 21630 11th Avenue S., Des Moines, WA 98198. You will have the opportunity to express your views on the Ordinance during the public comment section of the City Council meeting.

It is the intent of both cities to continue negotiations with you while maintaining the project's schedule. The City may use its powers of eminent domain to condemn and secure adequate rights for project construction while continuing negotiations with you for financial compensation. The Project's right-of-way agent, Rosa Villa, SRWA with Abeyta & Associates, will continue to oversee the acquisition process. If you have any questions about the upcoming City Council Meeting, the Ordinance, or the acquisition process, you may contact Rosa at (206) 629-8009 or at rosavilla@abeytaandassociates.com.

Sincerely,

Brandon Carver
 Director of Public Works

EXHIBIT "A"

Parcel No.: 3917400280

Owners Name: Jack & Bettie Hanning & Harmina C. Heroux

Right of Way AcquisitionLEGAL DESCRIPTION OF GRANTOR'S PARCEL

THE NORTH 70 FEET OF VACATED BLOCK 15, EXCEPT THE WEST 85 FEET THEREOF, AND THE NORTH 70 FEET OF VACATED BLOCK 16, LYING WEST OF THE WEST LINE OF DES MOINES WAY;

ALL IN KNIGHT'S SECOND ADDITION TO DES MOINES, "VACATED", ACCORDING TO THE PLAT RECORDED IN VOLUME 5 OF PLATS, PAGE 3, RECORDS OF KING COUNTY, WASHINGTON.

TOGETHER WITH VACATED ALLEY ADJOINING SAID NORTH 70 FEET OF SAID BLOCK 15 AND 16;

ALSO THAT PORTION OF BLOCKS 15 AND 16, KNIGHT'S SECOND ADDITION TO DES MOINES, "VACATED", ACCORDING TO THE PLAT RECORDED IN VOLUME 5 OF PLATS, PAGE 3, RECORDS OF KING COUNTY, WASHINGTON, LYING WESTERLY OF DES MOINES WAY AND NORTHERLY OF SOUTH 200TH STREET;

EXCEPT THE NORTH 70 FEET,

AND EXCEPT THE WEST 85 FEET;

TOGETHER WITH ADJOINING VACATED ALLEY LYING SOUTH OF SAID NORTH 70 FEET.

TOGETHER WITH THE SOUTH HALF OF VACATED SOUTH 199TH STREET LYING EASTERLY OF THE NORTHERLY EXTENSION OF THE EAST LINE OF THE WEST 85 FEET OF LOT 1, BLOCK 15 AND WESTERLY LINE OF 42 FEET (MEASURED AT THE RIGHT ANGLE) WEST OF AND PARALLEL WITH THE CENTER LINE OF DES MOINES WAY, SOUTH;

LEGAL DESCRIPTION OF ACQUISITION AREA

That portion of said Parcel described above lying South and East of the following described line:

BEGINNING at a point on the Westerly line of said Parcel and 8.50 feet Northerly of the Southerly line of said Parcel, measured perpendicular to said Southerly line;
THENCE Easterly, parallel with said Southerly line to a point 29.00 feet Westerly of the Easterly line of said parcel, measured perpendicular to said Easterly line;
THENCE Northeasterly, parallel with said Easterly line to a point 15.00 feet Northerly of the Southerly line of said Parcel and 29.00 feet Westerly of the Easterly line of said Parcel, both of which are measured perpendicular to their respective line;

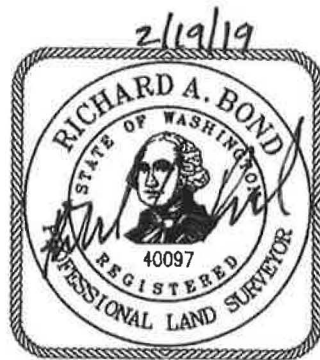
THENCE Easterly, parallel with said Southerly line to a point 10.50 feet Westerly of the Easterly line of said Parcel measured perpendicular to said Easterly line;

THENCE Northerly, parallel with said Easterly line to a point 10.50 feet Westerly of the Easterly line of said Parcel and 49.32 feet Northerly of the Southerly line of said Parcel, both of which are measured perpendicular to their respective line;

THENCE Northeasterly to a point 3.00 feet Westerly of the Easterly line of said Parcel and 61.22 feet Northerly of the Southerly line of said Parcel, both of which are measured perpendicular to their respective line;

THENCE Northeasterly, parallel with said Easterly line to a point on the South line of the South half of Vacated South 199th Street and the TERMINUS of the herein described line.

Contains: 1,468 Square Feet, more or less.



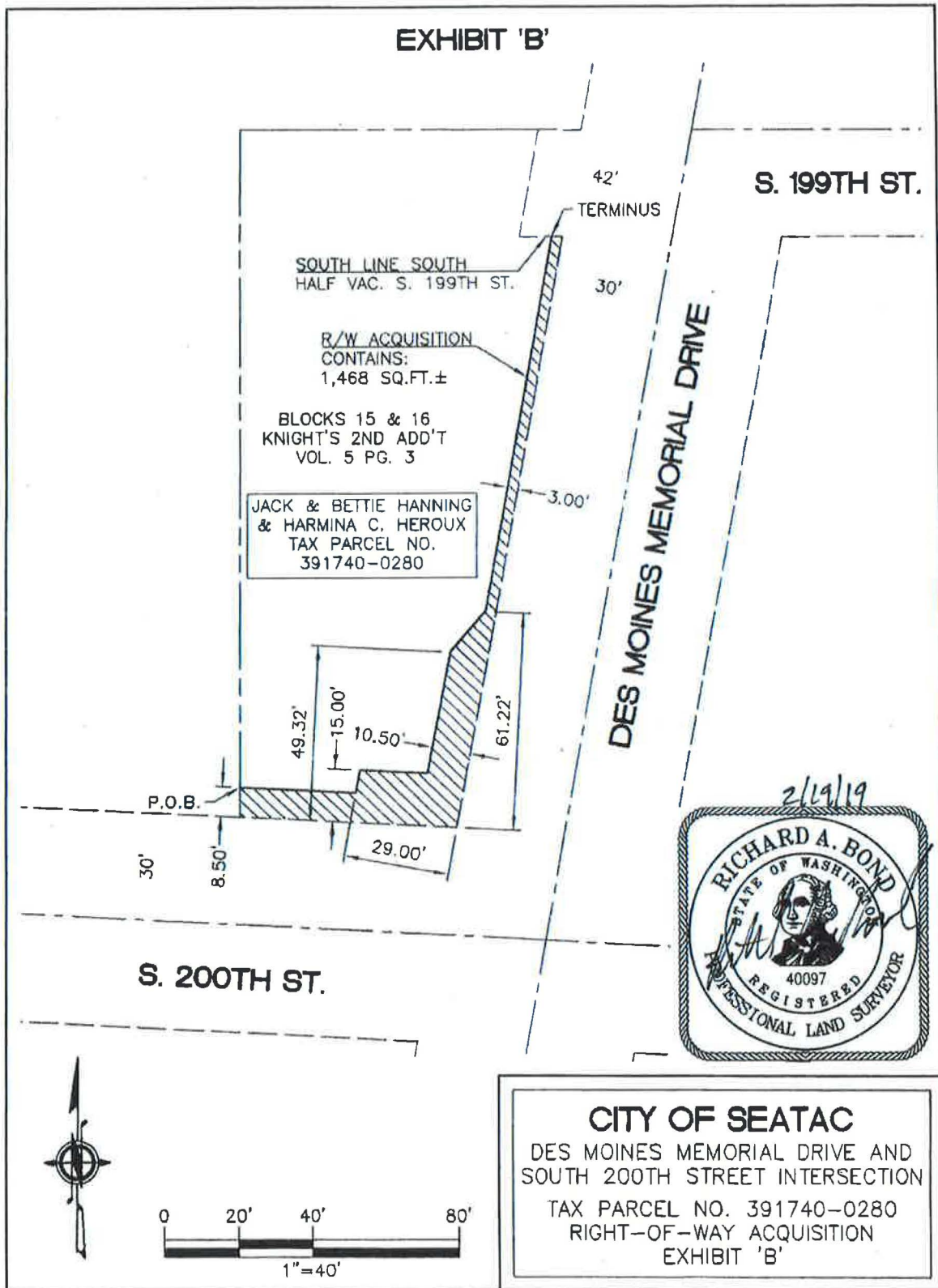


EXHIBIT "A"

Parcel No.: 3917400280

Owners Name: Jack & Bettie Hanning & Harmina C. Heroux

Temporary Construction Easement

LEGAL DESCRIPTION OF GRANTOR'S PARCEL

THE NORTH 70 FEET OF VACATED BLOCK 15, EXCEPT THE WEST 85 FEET THEREOF, AND THE NORTH 70 FEET OF VACATED BLOCK 16, LYING WEST OF THE WEST LINE OF DES MOINES WAY;

ALL IN KNIGHT'S SECOND ADDITION TO DES MOINES, "VACATED", ACCORDING TO THE PLAT RECORDED IN VOLUME 5 OF PLATS, PAGE 3, RECORDS OF KING COUNTY, WASHINGTON.

TOGETHER WITH VACATED ALLEY ADJOINING SAID NORTH 70 FEET OF SAID BLOCK 15 AND 16;

ALSO THAT PORTION OF BLOCKS 15 AND 16, KNIGHT'S SECOND ADDITION TO DES MOINES, "VACATED", ACCORDING TO THE PLAT RECORDED IN VOLUME 5 OF PLATS, PAGE 3, RECORDS OF KING COUNTY, WASHINGTON, LYING WESTERLY OF DES MOINES WAY AND NORTHERLY OF SOUTH 200TH STREET;

EXCEPT THE NORTH 70 FEET,

AND EXCEPT THE WEST 85 FEET;

TOGETHER WITH ADJOINING VACATED ALLEY LYING SOUTH OF SAID NORTH 70 FEET.

TOGETHER WITH THE SOUTH HALF OF VACATED SOUTH 199TH STREET LYING EASTERLY OF THE NORTHERLY EXTENSION OF THE EAST LINE OF THE WEST 85 FEET OF LOT 1, BLOCK 15 AND WESTERLY LINE OF 42 FEET (MEASURED AT THE RIGHT ANGLE) WEST OF AND PARALLEL WITH THE CENTER LINE OF DES MOINES WAY SOUTH;

LEGAL DESCRIPTION OF EASEMENT AREA

That portion of said Parcel described above included within a strip of land 5.00 feet wide, lying North and West of the following described line:

COMMENCING at a point on the Westerly line of said Parcel and 8.50 feet Northerly of the Southerly line of said Parcel, measured perpendicular to said Southerly line;
THENCE Easterly, parallel with said Southerly line to a point 29.00 feet Westerly of the Easterly line of said parcel, measured perpendicular to said Easterly line;
THENCE Northeasterly, parallel with said Easterly line to a point 15.00 feet Northerly of the Southerly line of said Parcel and 29.00 feet Westerly of the Easterly line of said Parcel, both of

which are measured perpendicular to their respective line, said point being the POINT OF BEGINNING of the herein described line;

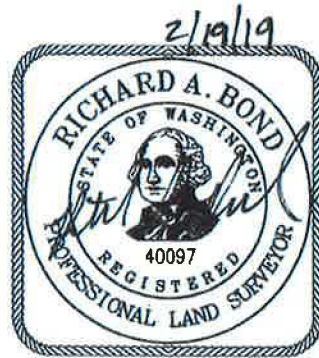
THENCE Easterly, parallel with said Southerly line to a point 10.50 feet Westerly of the Easterly line of said Parcel measured perpendicular to said Easterly line;

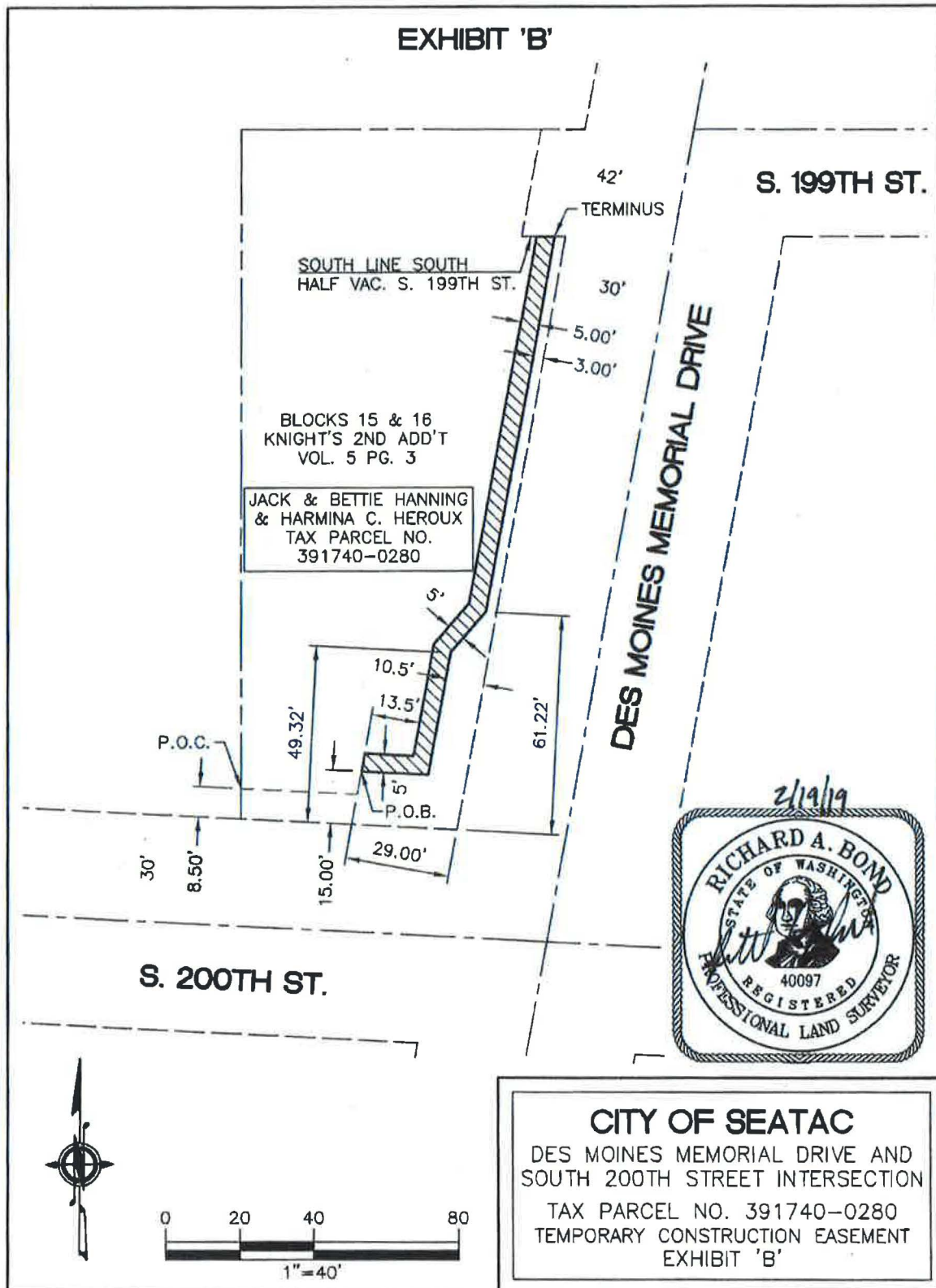
THENCE Northerly, parallel with said Easterly line a to a point 10.50 feet Westerly of the Easterly line of said Parcel and 49.32 feet Northerly of the Southerly line of said Parcel, both of which are measured perpendicular to their respective line;

THENCE Northeasterly to a point 3.00 feet Westerly of the Easterly line of said Parcel and 61.22 feet Northerly of the Southerly line of said Parcel, both of which are measured perpendicular to their respective line;

THENCE Northeasterly, parallel with said Easterly line to a point on the South line of the South half of Vacated South 199th Street and the TERMINUS of the herein described line.

Contains: 849 Square Feet, more or less.







June 25, 2019

VIA CERTIFIED; RETURN RECEIPT

Susan Kristin Knudson and Jason Paul Schuler
110 S. 200th Street
SeaTac, WA 98198

**RE: Des Moines Memorial Drive South and South 200th Street Intersection Improvement Project
("Project") – Parcel No. 391740-0281**

Dear Ms. Knudson:

The City of Des Moines has partnered with the City of SeaTac for construction of the Des Moines Memorial Drive South and South 200th Street Intersection Improvement Project ("Project"). The City of SeaTac is the lead agency for this road improvement Project, and construction and these improvements will occur in both cities. More specifically, this Project consists of constructing a traffic signal system at the intersection of Des Moines Memorial Drive South and South 200th Street, including turn lanes, curbs, gutters, sidewalk, bike lanes, storm drainage, conversion of utilities to underground, utility lines, street lighting, and paving.

On July 11, 2019, the Des Moines City Council will be considering an Ordinance authorizing the City of Des Moines to acquire through condemnation all remaining property rights located in the City for the Project as of the date of this letter through Eminent Domain (Condemnation). The City is taking this action as a precaution to make sure authorization for construction is secured in order to secure authorization to bid the project later this summer or early fall. If the City of SeaTac, as lead agency, is able to complete negotiations with you, this action will be moot.

In compliance with RCW 8.25.290, the City is required to provide you with formal written notice before the City Council takes "final action" authorizing condemnation of property. The Ordinance authorizing acquisition through negotiation or condemnation will be on the City Council Agenda for approval at 7:00 p.m. on July 11, 2019. The Ordinance authorizes the City Attorney to use the City's Eminent Domain authority and will be considered as the Council's final action.

If you wish to attend this City Council meeting, the Council Chambers are located at 21630 11th Avenue S., Des Moines, WA 98198. You will have the opportunity to express your views on the Ordinance during the public comment section of the City Council meeting.

It is the intent of both cities to continue negotiations with you while maintaining the project's schedule. The City may use its powers of eminent domain to condemn and secure adequate rights for project construction while continuing negotiations with you for financial compensation. The Project's right-of-way agent, Rosa Villa, SRWA with Abeyta & Associates, will continue to oversee the acquisition process. If you have any questions about the upcoming City Council Meeting, the Ordinance, or the acquisition process, you may contact Rosa at (206) 629-8009 or at rosavilla@abeytaandassociates.com.

Sincerely,


Brandon Carver
Director of Public Works

EXHIBIT "A"

Parcel No.: 3917400281
 Owners Name: Susan Knudson
Temporary Construction Easement

LEGAL DESCRIPTION OF GRANTOR'S PARCEL

KNIGHT'S SECOND ADD TO DES MOINES W 85 FT OF VAC LOTS 1 THRU 8 BLK 15 LESS POR THOF LY WITHIN S 200TH ST TGW E HALF OF VAC 11TH AVE S LY SLY OF C/L OF S 199TH ST PER SC #84-2-01654-0 & NLY OF LINE 42 FT N OF & PLL WITH C/L OF S 200TH ST TGW S HALF OF VAC S 199TH ST LV WLY OF NLY PRODUCTION OF E LINE OF W 85 FT OF SD LOT 1 LESS POR THOF DAF: BEG AT INTSN OF C/L 11TH AVE S & OF C/L S 199TH ST TH S 89-50-54 E 115.00 FT ALG SD C/L S 199TH ST TO PT OF INTSN WITH NLY PRODUCTION OF E LINE OF W 85 FT LOT 1 BLK 15 KNIGHT'S SECOND ADD TO DES MOINES TH S 00-09-06 W ALG SD NLY PRODUCTION DIST 15.00 FT TO S LINE OF N 15.00 FT OF S HALF S 199TH ST TH ALG SD S LINE N 89-50-54 W 115.00 FT TO C/L 11TH AVE S TH N 00-09-06 E 15.00 FT ALG SD C/L TO POB -- AS DELINEATED PER KING CO BNDRY LINE ADJUSTMENT NO S920012 APPROVED 13 FEB 1992

PLat Block: 15

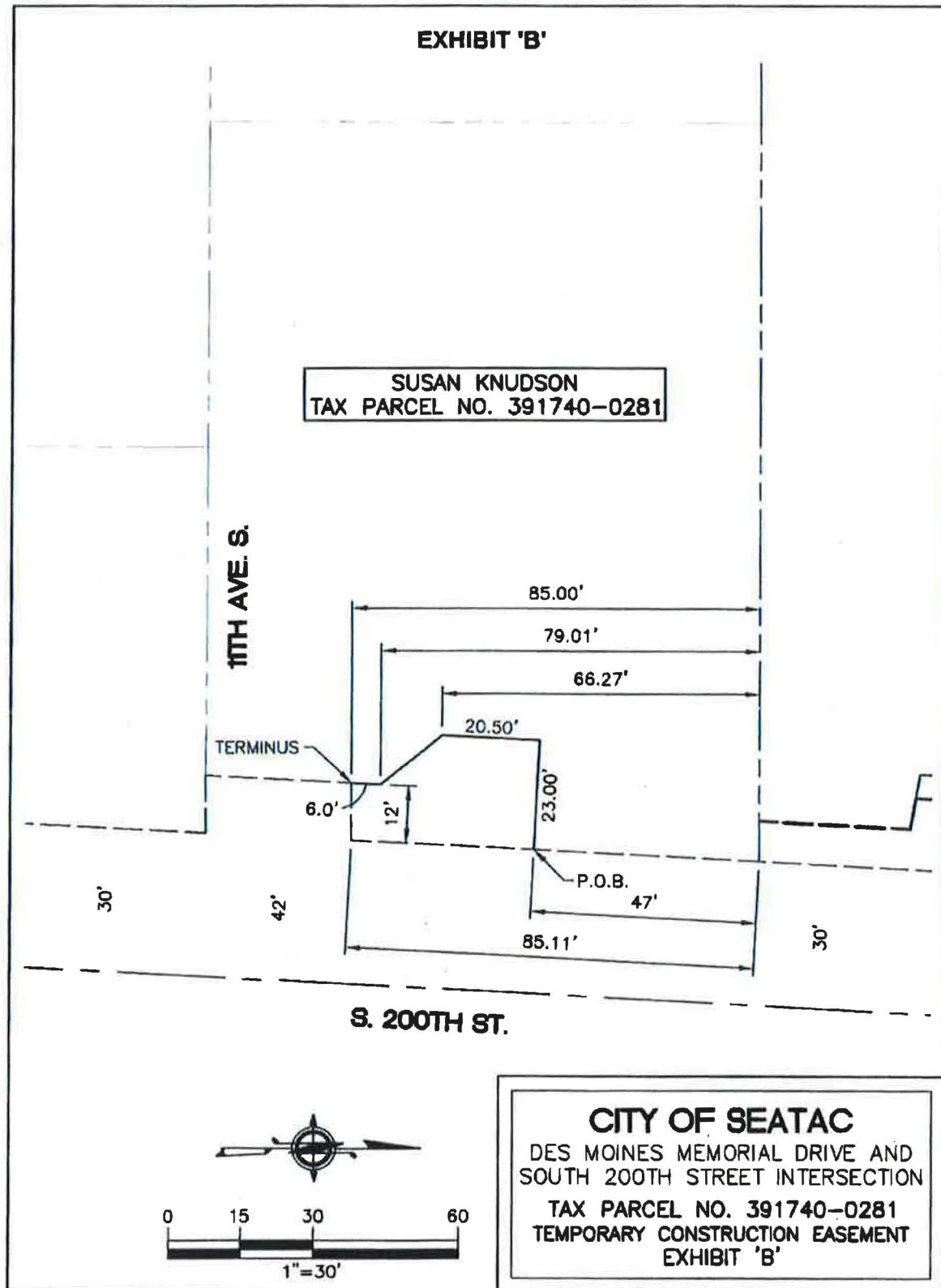
Plat Lot: POR 1 THRU 8

LEGAL DESCRIPTION OF EASEMENT AREA

That portion of said Parcel described above lying South of the following described line:

BEGINNING at a point on the Southerly line of the Parcel described above 47.00 feet Westerly of the Easterly line of said Parcel, measured perpendicular to said Easterly line;
 THENCE Northerly to a point 47.00 feet Westerly of the Easterly line of said Parcel and 23.00 feet Northerly of the Southerly line of said Parcel, both of which are measured perpendicular to their respective line;
 THENCE Westerly to a point 66.27 feet Westerly of the Easterly line of said Parcel and 23.00 feet Northerly of the Southerly line of said Parcel, both of which are measured perpendicular to their respective line;
 THENCE Southwesterly to a point 79.01 feet Westerly of the Easterly line of said Parcel and 12.01 feet Northerly of the Southerly line of said Parcel, both of which are measured perpendicular to their respective line;
 THENCE Westerly to a point on the Southerly line of said Parcel 85.11 feet Westerly of the Easterly line of said Parcel and the TERMINUS of the herein described line.

Contains: 753.5 Square Feet, more or less.



A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: Draft Ordinance 18-107 Small Cell
Facilities Franchise Agreement with Extenet
Systems, Inc., First Reading

ATTACHMENTS:

1. Draft Ordinance No. 18-107
2. Map and plans for proposed facilities

FOR AGENDA OF: July 11, 2019

DEPT. OF ORIGIN: Legal

DATE SUBMITTED: July 1, 2019

CLEARANCES:

- [X] Community Development gmc
 [] Marina _____
 [] Parks, Recreation & Senior Services _____
 [X] Public Works pbc

CHIEF OPERATIONS OFFICER: DSB

- [X] Legal JS
 [X] Finance QR
 [] Courts _____
 [] Police _____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: [Signature]

Purpose and Recommendation

The purpose of this agenda item is for the City Council to consider a small cell telecommunications Franchise Agreement with Extenet Systems, Inc. This proposed Franchise Agreement requires two readings by the City Council.

Suggested Motion

Motion 1: "I move to pass Draft Ordinance No. 17-070 to a second reading on the next available City Council agenda."

Background

A franchise agreement authorizes an entity to make use of the city streets for the purpose of carrying on the business in which it is generally engaged, that is, of furnishing service to members of the public. The grant of a franchise is a special privilege that allows particular individuals to profit from the use of the city streets in a manner not generally available to the public as a common right. The legislature has

granted authority to cities to grant a nonexclusive franchise. RCW 35A.47.040. Once granted, a franchise is a contract which is binding on both the grantor and the grantee.

The City has been working with Extenet Systems Inc. since 2018 to prepare this draft franchise agreement to allow for the installation of small cell facilities in City right-of-way. If approved, this agreement would be the City's second for the installation of small-cell antennas. In 2018 the City Council updated Title 20 (Telecommunications Code) and included provisions for small cell facilities. These codes provide the framework for this agreement.

The use of data by wireless devices has grown exponentially in recent years and the wireless technology required to provide that data has continued to evolve. In order to serve customers' data needs, wireless providers have begun to deploy what are known as "small cell" facilities to supplement the coverage provided by the large macro cell facilities. These small cell facilities are significantly smaller than their macro counterparts, but they must be deployed in greater numbers and spaced much closer together. The companies seeking to deploy these small cells frequently seek to locate them on existing utility poles or to install them on new poles in public rights-of-way.

A small cell facility or antenna contains radios and antennas as well as requires power and fiber in order to transmit cellular phone and data signals. Typically, small cells are attached to utility poles or light/traffic poles within the rights-of-way. The purpose of the small cells is to augment capacity for data traffic in dense areas (primarily downtown cores and residential neighborhoods), and they are typically 25-45 feet in height, rather than tall macro towers that extend beyond 75 feet.

In 2017, the City contracted with the law firm Ogden Murphy Wallace to assist the City with updating the Telecommunications Code in Title 20 and preparing for small cell franchise applications. The Telecommunications Code updates were adopted in the third quarter of 2018 and contain the maximum degree of regulation that is allowed by law.

The City's consultant provided a model draft franchise that was used as the template for this agreement. This agreement contains terms consistent with the previous small cell franchise that was approved by the Council in early 2019.

Discussion

There are a number of federal laws that apply to small cell facilities that contain provisions intended to spur the development of wireless infrastructure and impose limits on local authority over that infrastructure. The Telecommunications Act, for instance, makes it unlawful for local government to prohibit, or have the effect of prohibiting, the "provision of personal wireless service," prevents local government from "unreasonably discriminating among providers of functionally equivalent services," and requires that local government "act on any authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time." It also stipulates that local governments denying siting applications do so "in writing and supported by substantial evidence contained in a written record."

Although cities are limited in what they can regulate, this Agreement addresses the areas where regulation is possible in order to effectively protect the interests of the citizens as well as to provide the necessary data capacity to meet demand.

The key terms of the franchise agreements are detailed below.

1. **Franchise Term:** The term of the Franchise is for 10 years.
2. **Small Cell Facilities:** Extenet is currently proposing to install 2 small cell facilities on existing utility poles in the City. (See Attachment 2). Additional futures sites would require a separate application and approval in accordance with Title 20 of the Municipal Code (Telecommunications).
3. **Safety Issues:** Congress has preempted state and local regulation of radio frequency emissions and interference. The City's telecommunications code contains the maximum level of regulation over frequency emissions available to the City in the form of a requirement that an applicant certify compliance of small cells and other transmitting equipment with federal regulation. In the view of the FCC, the emissions from small cell facilities are well below acceptable limits for Maximum Permissible Exposure (MPE). Small cell facilities operate at a small fraction of regulated power. The FCC accordingly granted a categorical exclusion from environmental review for facilities meeting certain height and frequency requirements. See A Local Government Official's Guide to Transmitting Antennae RF Emission Safety: Rules, Procedures and Practical Guidance. FCC, June 2, 2000.
4. **Relocation Costs:** Extenet is solely responsible for relocation costs unless state law requires otherwise. RCW 35.99.060 applies specifically to telecommunications franchises and requires cities to share in some relocation costs for specific instances where a city requires relocation for a private party's benefit or if a city requires relocation twice within a 5 year period.
5. **Right of Way Management, Planning, and Operations:** The Franchise reflects current City practice. Extenet is required to follow City permitting processes prior to installation of facilities or any work in the right-of-way.
6. **Indemnification and Insurance:** The Agreement provides that Extenet will indemnify the City for actions of the company or their agents. Extenet is required to maintain \$5,000,000 in automobile and general liability insurance coverage. This coverage is sufficient and likely exceeds any reasonably expected liability that could occur from this Agreement.
7. **Franchise Application Fee:** Extenet has paid the City a one-time franchise application fee of \$20,000. This flat fee is consistent with RCW 35.21.860 which requires that a franchise fee be limited to the actual administrative expenses incurred by the City in the negotiation of the franchise. This amount will reimburse the City for the staff costs of the negotiations as well as consultant costs that have been incurred since the application was received.
8. **Taxes:** Under DMMC 3.68.060(3) the City imposes a 6% tax on telephone businesses. To the extent that increased revenue is received from Extenet's telephone business, the City will receive 6%. Internet service revenues are not taxed pursuant to federal law.
9. **Abandonment:** The Franchise requires that Extenet remove any facilities that have been discontinued or are no longer functioning within 60 days. Additionally, the City can order removal of a facility with 120 days' notice.
10. **Additional Terms** – The majority of the remainder of the Agreement is boilerplate legal language. All language and terms have been thoroughly reviewed and negotiated and the City's interests are protected throughout these Agreements.

Alternatives

1. Pass the Draft Ordinance to a second reading as written.
2. Pass the Draft Ordinance to a second reading with proposed amendments to be negotiated with Extenet.
3. Do not pass the Draft Ordinance to a second reading and direct staff to continue negotiations.

Financial Impact

The City has received an initial \$20,000 to cover the City's costs of the negotiation of this Franchise Agreement. Additionally, the City will receive all permitting costs for work to be conducted and any additional staffing time that is spent administering this Agreement can be billed to Extenet.

Finally, the City will receive 6% utility tax on the telephone business conducted by Extenet. Increasing capabilities for customers of Extenet in the City may increase usage which would result over time in increased taxes.

Recommendation

The Legal Department, Planning, Building, and Public Works, and Finance Department recommend passing the Draft Ordinance to a second reading.

CITY ATTORNEY'S DRAFT 04/1/2019**DRAFT ORDINANCE NO. 18-107**

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON granting to Extenet Systems, Inc. and its affiliates, successors and assigns, the right, privilege, authority and nonexclusive Franchise for ten years, to construct, maintain, operate, replace, and repair a telecommunications network, in, across, over, along, under, through and below certain designated public rights-of-way of the City of Des Moines, Washington.

WHEREAS, ExteNet Systems, Inc. (the "Franchisee") has requested that the City Council grant a nonexclusive franchise (this "Franchise"), and

WHEREAS, the City Council has the authority to grant Franchises for the use of its streets and other public properties pursuant to RCW 35A.47.040, and

WHEREAS, the City Council seeks to facilitate the availability of reliable, personal wireless communication services for its citizens and the public by permitting the placement of small cell facilities where appropriate, and

WHEREAS, the installation, expansion, and maintenance of small cell technology facilities and associated structures on or along the Right of Way and on private properties may have an impact upon: (1) the aesthetic values and character of the City; (2) safe use and passage on or along the Rights of Way by the public; and (3) properties and property values in the City in areas where such structures are placed, and therefore local regulation is appropriate, and

WHEREAS, the federal Telecommunications Act of 1996 and regulations promulgated with respect to the Act by the Federal Communications Commission ("FCC") authorize local governments to enact reasonable regulations for the placement, expansion, height, and maintenance of small cell technologies facilities and associated structures, and

WHEREAS, the 1934 Communications Act, as amended relating to telecommunications providers recognizes and provides local government authority to manage the public rights-of-way and to require fair and reasonable compensation on a competitively neutral and nondiscriminatory basis, and

Ordinance No. _____

WHEREAS, a franchise does not include, and is not a substitute for any other permit, agreement, or other authorization required by the City, including without limitation, permits required in connection with construction activities in public ways which must be administratively approved by the City after review of specific plans, and

WHEREAS, Grantee shall be responsible for its actual costs in using, occupying and repairing public ways, and

WHEREAS, the City and Grantee desire to effectuate good coordination of the use of the rights-of-way, and

WHEREAS, the City Council finds that the franchise terms and conditions contained in this Ordinance are in the public interest; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. Franchise granted.

(1) Pursuant to RCW 35A.47.040, the City of Des Moines, a Washington municipal corporation (hereinafter the "City"), hereby grants to the Franchisee, its affiliates, heirs, successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth, a Franchise for a period of ten (10) years, beginning on the effective date of this ordinance, set forth in 0 herein.

(2) This Franchise ordinance grants Franchisee the right, privilege, and authority to construct, operate, maintain, replace, relocate, repair, upgrade, remove, excavate, acquire, restore, and use the Small Cell Facilities, as defined in Section 1.1, for its telecommunications network, in, under, on, across, over, through, along or below the public Rights-of-Ways located in the City of Des Moines, as approved pursuant to City codes and permits issued pursuant to this Franchise. Public "Rights-of-Way" means land acquired or dedicated for public roads and streets, but does not include: state highways; land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public; structures, including poles and conduits, located within the right-of-way; federally granted trust lands or forest board trust lands; Lands owned or managed by the state parks and recreation commission; or federally granted railroad rights-of-way acquired under 43 U.S.C. Sec. 912 and related provisions of federal law that are not open for motor vehicle use. Rights-of-Way for the purpose of this Franchise do not include: (i)

Ordinance No. _____

buildings, other City-owned physical facilities, parks, conduits, fixtures, real property or property rights owned by the City, or similar facilities or property owned by or leased to the City.

Sec. 2. Authority Limited to Occupation of Public Rights-of-Way for Services.

(1) The authority granted herein is a limited authorization to occupy and use the Rights-of-Way throughout the City (the "Franchise Area"). The Franchisee is authorized to place its Facilities in the Rights-of-Way only consistent with this Franchise, the Des Moines Zoning Code, the Comprehensive Plan, the Design and Construction Standards and the Des Moines Municipal Code (collectively the "Codes"). Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to the Franchisee other than for the purpose of providing telecommunications services. Franchisee hereby warrants that it expects to provide the following services within the City: small cell network consisting of a collection of interrelated Small Cell Facilities designed to deliver personal wireless services (the "Services").

(2) As used herein, "Small Cell Facilities" or "Facilities" means a personal wireless services facility that meets both of the following qualifications: (i) each antenna is located inside an antenna enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three (3) cubic feet; and (ii) primary equipment enclosures are no larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside the primary equipment enclosure and if so located, are not included in the calculation of equipment volume (but remain included in the definition of Small Cell Facilities): Electric meter, concealment, telecomm demarcation box, ground-based enclosures, battery back-up power systems, grounding equipment, power transfer switch, and cut-off switch. Small Cell Facilities shall also include all necessary cables, transmitters, receivers, equipment boxes, backup power supplies, power transfer switches, electric meters, coaxial cables, wires, conduits, ducts, pedestals, antennas, electronics, and other necessary or convenient appurtenances used for the specific wireless communications facility. Equipment enclosures with equipment generating noise that exceeds the noise limits allowed in the Codes or associated permit are excluded from "Small Cell Facilities." Services do not include those personal wireless services and

Ordinance No. _____

associated facilities that fall outside of the definition of Small Cell Facilities (i.e. macro facilities).

(3) This Franchise does not grant Franchisee the right to install and operate wires and facilities to provide wireline broadband transmission services, whether provided by a third-party provider, Franchisee, or a corporate affiliate of Franchisee. Any entity that provides such wireline broadband transmission services must have an independent franchise to use the Rights-of-Way outside of this Franchise. Further, this Franchise does not grant the right to offer cable internet services or Cable Services as those terms are defined in 47 U.S.C. § 522(6) by wireline transmission.

(4) No right to install any facility, infrastructure, wires, lines, cables, or other equipment, on any City property other than a Right-of-Way, or upon private property without the owner's consent, or upon any City, public or privately-owned poles or conduits is granted herein. Nothing contained within this Franchise shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to Franchisee other than for the purpose of providing the Services, or to subordinate the primary use of the Right-of-Way as a public thoroughfare. If Franchisee desires to expand the Services provided within the City, it shall request a written amendment to this Franchise. If Franchisee desires to use City owned property, or to site new structures within the Rights-of-Way, it shall enter into a separate lease, site specific agreement or license agreement with the City.

(5) Franchisee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers consistent with this Franchise provided:

(a) Franchisee at all times retains exclusive control over its telecommunications system, Facilities and Services and remains responsible for constructing, installing, and maintaining its Facilities pursuant to the terms and conditions of this Franchise;

(b) Franchisee may not grant rights to any customer or lessee that are greater than any rights Franchisee has pursuant to this Franchise;

(c) Such customer or lessee shall not be construed to be a third-party beneficiary under this Franchise; and

(d) No such customer or lessee may use the telecommunications system or Services for any purpose not authorized by this Franchise, nor to sell or offer for sale any service to the citizens of the City without all required business licenses, franchise or other form of state wide approval.

Sec. 3. Non-Exclusive Franchise Grant. This Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below, or across any said Rights-of-Way. This Franchise shall in no way prevent or prohibit the City from using any of said roads, streets, or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Rights-of-Way, thoroughfares and other public properties of every type and description.

Sec. 4. Location of Telecommunications Network Facilities.

(1) Franchisee may locate its Facilities anywhere within the Franchise Area consistent with the City's Design and Construction Standards and subject to the City's applicable Code requirements. Franchisee shall not be required to amend this Franchise to construct or acquire Facilities within the Franchise Area, provided that Franchisee does not expand its Services beyond those described in 0.

(2) To the extent that any Rights-of-Way within the Franchise Area are part of the state highway system ("State Highways"), are considered managed access by the City and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) regulations, Franchisee shall comply fully with said requirements in addition to local ordinances and other applicable regulations. Without limitation of the foregoing, Franchisee specifically agrees that:

(a) Any pavement trenching and restoration performed by Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;

(b) Any portion of a State Highway damaged or injured by Franchisee shall be restored, repaired and/or replaced by Franchisee to a condition that meets or exceeds applicable WSDOT requirements; and

(c) Without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this Franchise with respect to any portion of a State Highway.

Sec. 5. Relocation of Telecommunications Network Facilities.

(1) Relocation Requirement. The City may require Franchisee, and Franchisee covenants and agrees, to protect, support, temporarily disconnect, relocate, remove, its Facilities within the Right-of-Way when reasonably necessary for construction, alteration, repair, or improvement of the Right-of-Way for purposes of and for public welfare, health, or safety or traffic conditions, dedications of new Rights-of-Way and the establishment and improvement thereof, widening and improvement of existing Rights-of-Way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the City or other governmental entity, provided that Franchisee shall in all such cases have the privilege to temporarily bypass in the authorized portion of the same Rights-of-Way upon approval by the City, which approval shall not unreasonably be withheld or delayed, any Facilities required to be temporarily disconnected or removed. For the avoidance of doubt, such projects shall include any Right-of-Way improvement project, even if the project entails, in part, related work funded and/or performed by or for a third party, provided that such work is performed for the public benefit, but shall not include, without limitation, any other improvements or repairs undertaken by or for the sole benefit of third party private entities. Collectively all such projects described in this 0 shall be considered a "Public Project". Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to this 0 shall be borne by Franchisee.

(2) Relocation - Third Party Structures. If the request for relocation from the City originates due to a Public Project, in which structures or poles are either replaced or removed, then Franchisee shall relocate or remove its Facilities as required by the City, and at no cost to the City, subject to the procedure in 0. Franchisee acknowledges and agrees that the placement of Small Cell Facilities on third party-owned structures does not convey an ownership interest in such structures. Franchisee acknowledges and agrees, that to the extent Franchisee's Small Cell Facilities are on poles owned by third parties, the City shall not be

Ordinance No. _____

responsible for any costs associated with requests arising out of a Public Project.

(3) Relocation - Franchisee Owned Structures. The cost of relocation of any Franchisee owned poles or structures shall be determined in accordance with the requirements of RCW 35.99.060(3)(b), provided, however, that the Franchisee may opt to pay for the cost of relocating its Small Cell Facilities in order to provide consideration for the City's approval to site a Small Cell Facility on Franchisee owned structures or poles in a portion of the Right of Way designated or proposed for a Public Project. For this 0, designation of the Right of Way for a Public Project shall be undertaken in the City's Comprehensive Plan in accordance with the requirements of Ch. 36.70A RCW. The Comprehensive Plan includes, but is not limited to the Transportation element or Transportation Improvement Plan (TIP), Capital Facilities element, utilities element and any other element authorized by RCW 36.70A.070 and RCW 36.70A.080. The parties acknowledge that this provision is mutually beneficial to the parties, as the City may otherwise deny the placement of the Small Cell Facility at a particular site because of the cost impact of such relocation and the conflict with the City's Comprehensive Plan.

(4) Locate. Upon request of the City, or a third party performing work in the Right-of-Way, and in order to facilitate the design of City street and Right-of-Way improvements, Franchisee agrees, at its sole cost and expense, to locate, and if reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the Facilities' location may be taken into account in the improvement design. The decision as to whether any Facilities need to be relocated in order to accommodate the Public Projects shall be made by the City upon review of the location and construction of Franchisee's Facilities. The City shall provide Franchisee at least fourteen (14) days' written notice prior to any excavation or exposure of Facilities.

(5) Notice and Relocation Process. If the City determines that the project necessitates the relocation of Franchisee's existing Facilities, the following process shall apply:

(a) The City shall consult with the Franchisee in the predesign phase of any Public Project in order to coordinate the project's design with Franchisee's Facilities within such project's area.

(b) Franchisee shall participate in predesign meetings until such time as (i) both parties mutually determine that Franchisee's Facilities will not be affected by the Public Project, or (ii) until the City provides Franchisee with written notice regarding the relocation as provided in subsection (d) below.

(c) Franchisee shall, during the predesign phase evaluate and provide comments to the City related to any alternatives to possible relocations. The City agrees to give any alternatives proposed by the Franchisee full and fair consideration, but the final decision accepting or rejecting any specific alternative shall be within the City's sole discretion.

(d) The City shall provide Franchisee with its decision regarding the relocation of Franchisee's Facilities as soon as reasonably possible, but in no event less than one hundred twenty (120) days prior to the commencement of the construction of such Public Project; provided, however that in the event that the provisions of a state or federal grant require a different notification period or process than that outlined in 0, the City shall notify the Franchisee during the predesign meetings and the process mandated by the grant funding shall control.

(e) After receipt of such written notice, Franchisee shall relocate such Facilities to accommodate the Public Project consistent with the timeline provided by the City. Such timeline may be extended by a mutual agreement.

(f) Franchisee shall complete relocation of its Facilities at no charge or expense to the City pursuant to the timeline provided by the City, or as otherwise modified by the City.

(g) In the event of an emergency posing a threat to public safety or welfare, or in the event of an emergency beyond the control of the City which will result in severe financial consequences to the City, which necessitates the relocation of Franchisee's Facilities, Franchisee shall relocate its Facilities within the time period specified by the City.

(6) Alternative Arrangements. The provisions of this 0 shall in no manner preclude or restrict Franchisee from making any arrangements it may deem appropriate when responding to a

request for relocation of its Facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated, or maintained facilities, provided that such arrangements do not unduly delay a City construction project.

(7) Contractor Delay Claims. Franchisee shall be solely responsible for the out-of-pocket costs incurred by the City for delays in a Public Project to the extent the delay is caused by or arises out of Franchisee's failure to comply with the final schedule for the relocation (other than as a result of a Force Majeure Event or causes or conditions caused by the acts or omissions of the City or any third party unrelated to Franchisee. Franchisee vendors and contractors shall not be considered unrelated third parties). Such out-of-pocket costs may include, but are not limited to, payment to the City's contractors and/or consultants for increased costs and associated court costs, interest, and attorneys' fees incurred by the City to the extent directly attributable to such Franchisee's caused delay in the Public Project.

(8) Indemnification. Franchisee will indemnify, hold harmless, and pay the costs of defending the City, in accordance with the provisions of 0, against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of Franchisee to remove or relocate its Facilities as provided in this 0; provided, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of Franchisee or the sole negligence, willful misconduct, or unreasonable delay of the City or any unrelated third party.

(9) City's Costs. If Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by the City following the procedures outlined in 0 through 0 then upon at least ten (10) days written notice to Franchisee, the City may perform such work or cause it to be done, and the City's costs shall be paid by Franchisee pursuant to 0 and 0.

(10) Survival. The provisions of this 0 shall survive the expiration or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Sec. 6. Undergrounding of Facilities.

(1) Franchisee shall not be permitted to erect poles, unless permitted by the City pursuant to 0 and the Codes. Franchisee acknowledges and agrees that if the City allows the

Ordinance No. _____

placement of Small Cell Facilities above ground the City may, at any time in the future, require the conversion of Franchisee's aerial facilities to an underground installation or relocated at Franchisee's expense if the existing poles on which Franchisee's Facilities are located are designated for removal due to a Public Project as described in 0. This Franchise does not place an affirmative obligation on the City to allow the relocation of such Facilities on public property or in the Rights-of-Way, nor does it relieve Franchisee from any Code provision related to the siting of wireless facilities.

(2) Franchisee shall not be required to underground any portion of the Facility that must technically remain above-ground to operate. If the City requires undergrounding of wirelines (either telecommunications or electrical) and allows Franchisee's Facilities to remain above ground, then Franchisee shall cooperate with the City and modify the affected Facilities to incorporate the placement of wireline services underground and internal to the pole if the replacement pole is hollow (for example electrical and fiber) or otherwise consistent with a design plan agreed to between the City and Franchisee, at no cost to the City. Franchisee shall be treated equally to other utilities in regards to undergrounding requirements.

(3) Franchisee shall not remove any underground Facilities that require trenching or other opening of the Rights-of-Way, except as provided in this 0. Franchisee may remove any underground Facilities from the Right-of-Way that have been installed in such a manner that it can be removed without trenching or other opening of the Right-of-Way, or if otherwise permitted by the City. When the City determines, in the City's reasonable discretion, that Franchisee's underground Facilities must be removed in order to eliminate or prevent a hazardous condition, Franchisee shall remove such Facilities at Franchisee's sole cost and expense. Franchisee must apply and receive a permit, pursuant to Section 1.1(g)(2), prior to any such removal of underground Facilities from the Right-of-Way and must provide as-built plans and maps pursuant to 0.

(4) The provisions of this 0 shall survive the expiration, revocation, or termination of this Franchise. Nothing in this 0 shall be construed as requiring the City to pay any costs of undergrounding any of the Franchisee's Facilities.

Sec. 7. Maps and Records.

(1) Following any construction, excluding modifications that meets the same or substantially similar

Ordinance No. _____

dimensions of the Small Cell Facility, Franchisee shall provide the City with accurate copies of as-built plans and maps prepared by Franchisee's design and installation contractors for all existing Small Cell Facilities in the Franchise Area. These plans and maps shall be provided at no cost to the City and shall include hard copies and digital files in Autocad or other industry standard readable formats that are acceptable to the City and delivered electronically. Further, Franchisee shall provide such maps within thirty (30) days following a request from the City. Franchisee shall warrant the accuracy of all plans, maps and as-builts provided to the City.

(2) Within thirty (30) days of a written request from the City Engineer, the Franchisee shall furnish the City with information sufficient to reasonably demonstrate that the Franchisee has complied with all applicable requirements of this Franchise.

(3) All books, records, maps, and other documents maintained by Franchisee with respect to its Facilities within the Rights-of-Way shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this 0 shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this 0 be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise permitted or required by State or federal law, nothing in this 0 shall be construed as permission to withhold relevant customer data from the City that the City requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information such as names, street addresses (excluding City and zip code), Social Security Numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.

(4) Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature; provided, however, Franchisee shall disclose such information to comply with a utility tax audit. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. In the event that the City receives a public records request under Chapter 42.56 RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade

Ordinance No. _____

secret, or proprietary, the City shall promptly provide written notice of such disclosure so that Franchisee can take appropriate steps to protect its interests.

(5) Nothing in 0 or 0 prohibits the City from complying with Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order and such higher court action is or has become final and non-appealable, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records as required hereunder within sixty (60) days of a request from the City.

(6) On an annual basis, upon thirty (30) days prior written notice, the City shall have the right to conduct an independent audit of Franchisee's records reasonably related to the administration or enforcement of this Franchise, in accordance with GAAP. If the audit shows that tax or fee payments have been underpaid by three percent (3%) or more, Franchisee shall pay the total cost of the audit.

Sec. 8. Work in the Rights-of-Way.

(1) During any period of relocation, construction or maintenance, all work performed by Franchisee or its contractors shall be accomplished in a safe and workmanlike manner, so to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Franchisee shall at all times post and maintain proper barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. The provisions of this 0 shall survive the expiration or termination of this Franchise and during such time as Franchisee continues to have Facilities in the Rights of Way.

(2) Whenever Franchisee shall commence work in any Rights-of-Way for the purpose of excavation, installation, construction, repair, maintenance, or relocation of its Facilities, it shall apply to the City for a permit to do so and,

in addition, shall give the City at least ten (10) working days prior notice (except in the case of an emergency) of its intent to commence work in the Rights-of-Way. During the progress of the work, the Franchisee shall not unnecessarily obstruct the passage or proper use of the Rights-of-Way, and all work by the Franchisee in the area shall be performed in accordance with applicable City standards and specifications and warranted for a period of two (2) years. In no case shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this Franchise.

(3) The City reserves the right to limit or exclude Franchisee's access to a specific route, public Right-of-Way or other location when, in the judgment of the Public Works Director there is inadequate space (including but not limited to compliance with ADA clearance requirements and maintaining a clear and safe passage through the Rights-of-Way), a pavement cutting moratorium, unnecessary damage to public property, public expense, inconvenience, interference with City utilities, or for any other reason determined by the Public Works Director.

(4) If the Franchisee shall at any time plan to make excavations in any area covered by this Franchise, the Franchisee shall afford the City, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

(a) Such joint use shall not unreasonably delay the work of the Franchisee causing the excavation to be made;

(b) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and

(c) To the extent reasonably possible, Franchisee, at the direction of the City, shall cooperate with the City and provide other private utility companies with the opportunity to utilize joint or shared excavations in order to minimize disruption and damage to the Right-of-Way, as well as to minimize traffic-related impacts.

(d) Franchisee may only charge the incremental costs to the City of installing facilities supplied by the City in such joint or shared excavations.

(5) At the discretion of the City Engineer and depending on the impact to the usage of the Rights-of-Way, Franchisee shall give reasonable advance notice of intended construction to

Ordinance No. _____

entities or persons adjacent to the affected area. Such notice shall contain the dates, contact number, nature and location of the work to be performed. Following performance of the work, Franchisee shall restore the Right-of-Way to City standards in effect at the time of construction except for any change in condition not caused by Franchisee. Any disturbance of landscaping, fencing, or other improvements on private property caused by Franchisee's work shall, at the sole expense of Franchisee, be promptly repaired and restored to the reasonable satisfaction of the property owner/resident. Notwithstanding the above, nothing herein shall give Franchisee the right to enter onto private property without the permission of such private property owner, or as otherwise authorized by applicable law.

(6) Franchisee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of such trees from coming in contact with Franchisee's Facilities. The right to trim trees in this 0 shall only apply to the extent necessary to protect above ground Facilities. Franchisee shall ensure that its tree trimming activities protect the appearance, integrity, and health of the trees to the extent reasonably possible. Franchisee shall be responsible for all debris removal from such activities. All trimming, except in emergency situations, is to be done after the explicit prior written notification and approval of the City and at the expense of Franchisee. Franchisee may contract for such services, however, any firm or individual so retained must first receive City permit approval prior to commencing such trimming. Nothing herein grants Franchisee any authority to act on behalf of the City, to enter upon any private property, or to trim any tree or natural growth encroaching into the Public Rights-of-Way. Franchisee shall be solely responsible and liable for any damage to any third parties' trees or natural growth caused by Franchisee's actions. Franchisee shall indemnify, defend and hold harmless the City from third-party claims of any nature arising out of any act or negligence of Franchisee with regard to tree and/or natural growth trimming, damage, and/or removal. Franchisee shall reasonably compensate the City or the property owner for any damage caused by trimming, damage, or removal by Franchisee. Except in an emergency situation, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, and in a manner consistent with the most recent issue of "Standards of Pruning for Certified Arborists" as developed by the International Society of Arboriculture or its industry accepted equivalent (ANSI A300), unless otherwise approved by the City Engineer or his/her designee.

(7) Franchisee shall meet with the City and other franchise holders and users of the Rights-of-Way upon written notice to schedule and coordinate construction in the Rights-of-Way. All construction locations, activities, and schedules shall be coordinated, as ordered by the City to minimize public inconvenience, disruption or damages.

(8) Franchisee shall inform the City with at least thirty (30) days' advance written notice that it is constructing, relocating, or placing ducts or conduits in the Rights-of-Way and provide the City with an opportunity to request that Franchisee provide the City with additional duct or conduit and related structures necessary to access the conduit pursuant to RCW 35.99.070.

(9) Franchisee shall maintain all above ground improvements that it places on City Rights-of-Way pursuant to this Franchise. In order to avoid interference with the City's ability to maintain the Right-of-Way, Franchisee shall provide a clear zone to meet the Public Works Engineering and Construction Standards. If Franchisee fails to comply with this provision, and by its failure, property is damaged, then Franchisee shall be responsible for all damages caused thereby, including restoration.

Sec. 9. One Call Locator Service. Prior to doing any work in the Rights-of-Way, the Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Further, upon request, by the City or a third party, Franchisee shall locate its Facilities consistent with the requirements of Chapter 19.122 RCW. The City shall not be liable for any damages to Franchisee's Facilities or for interruptions in service to Franchisee's customers that are a direct result of Franchisee's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

Sec. 10. Safety Requirements.

(1) Franchisee shall, at all times, employ professional care and shall install and maintain and use industry-standard methods for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the Rights-of-Ways, wherever situated or located, shall at all times be kept and maintained in a safe condition. Franchisee shall comply with all federal, State, and City safety requirements,

Ordinance No. _____

rules, regulations, laws, and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services. By way of illustration and not limitation, Franchisee shall also comply with the applicable provisions of the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards. Upon reasonable notice to Franchisee, the City reserves the general right to inspect the Facilities to evaluate if they are constructed and maintained in a safe condition.

(2) If an unsafe condition or a violation of Section 10.1 is found to exist, and becomes known to the City, the City agrees to give Franchisee written notice of such condition and afford Franchisee a reasonable opportunity to repair the same. If Franchisee fails to start to make the necessary repairs and alterations within the time frame specified in such notice (and pursue such cure to completion), then the City may make such repairs or contract for them to be made. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by Franchisee and reimbursed to the City pursuant to 0 and 0.

(3) Additional safety standards include:

(a) Franchisee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable on any aerial facilities.

(b) All installations of equipment, lines, and ancillary facilities shall be installed in accordance with industry-standard engineering practices and shall comply with all federal, State, and local regulations, ordinances, and laws.

(c) Any opening or obstruction in the Rights-of-Way or other public places made by Franchisee in the course of its operations shall be protected by Franchisee at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible.

(4) Stop Work Order. On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City. The stop work order shall:

- (a) Be in writing;
- (b) Be given to the person doing the work or posted on the work site;
- (c) Be sent to Franchisee by overnight delivery;
- (d) Indicate the nature of the alleged violation or unsafe condition; and
- (e) Establish conditions under which work may be resumed.

Sec. 11. Work of Contractors and Subcontractors.

Franchisee's contractors and subcontractors shall be licensed and bonded in accordance with State law and the City's ordinances, regulations, and requirements. Work by contractors and subcontractors are subject to the same restrictions, limitations, and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by Franchisee and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

Sec. 12. Restoration after Construction.

(1) Franchisee shall, promptly after installation, construction, relocation, maintenance, or repair of its Facilities, or within sixty (60) days after abandonment approved pursuant to 0, promptly remove any obstructions from the Rights-of-Way and restore the surface of the Rights-of-Way to at least the same condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or anyone doing work for Franchisee nor for reasonable wear and tear. The Public Works Director or his/her designee shall have final approval of the condition of such Rights-of-Way after restoration. All concrete encased survey monuments that have been disturbed or

Ordinance No. _____

displaced by such work shall be restored pursuant to federal, state (such as Chapter 332-120 WAC), and local standards and specifications.

(2) Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by work to the Franchise Area or other affected area at its sole cost and expense and according to the time and terms specified in the construction permit issued by the City. All work by Franchisee pursuant to this Franchise shall be performed in accordance with applicable City standards and warranted for a period of two (2) years and for undiscovered defects as is standard and customary for this type of work.

(3) If conditions (e.g. weather) make the complete restoration required under this 0 impracticable, Franchisee shall temporarily restore the affected Right-of-Way or property. Such temporary restoration shall be at Franchisee's sole cost and expense. Franchisee shall promptly undertake and complete the required permanent restoration when conditions no longer make such permanent restoration impracticable.

(4) In the event Franchisee does not repair or restore a Right-of-Way as required under this Section 12 or an improvement in or to a Right-of-Way, then upon fifteen (15) days' notice to Franchisee, the City may repair the damage and shall be reimbursed its actual cost within sixty (60) days of submitting an invoice to Franchisee in accordance with the provisions of 0 and 0. In addition, and pursuant to 0 and 0, the City may bill Franchisee for expenses associated with the inspection of such restoration work. The failure by Franchisee to complete such repairs shall be considered a breach of this Franchise and is subject to remedies by the City including the imposition of damages consistent with 0.

(5) The provisions of this 0 shall survive the expiration or termination of this Franchise so long as Franchisee continues to have Facilities in the Rights-of-Way and has not completed all restoration to the City's standards.

Sec. 13. Emergency Work/Dangerous Conditions.

(1) In the event of any emergency in which any of Franchisee's Facilities located in the Rights-of-Way breaks, falls, becomes damaged, or if Franchisee's Facilities is otherwise in such a condition as to immediately endanger the property, life, health or safety of any person, entity or the City, Franchisee shall immediately take the proper emergency measures to repair its

Ordinance No. _____

Facilities, to cure or remedy the dangerous conditions for the protection of property, life, health or safety of any person, entity or the City without first applying for and obtaining a permit as required by this Franchise. However, this shall not relieve Franchisee from the requirement of obtaining any permits necessary for this purpose, and Franchisee shall apply for all such permits not later than the next succeeding day during which the Des Moines City Hall is open for business. The City retains the right and privilege to cut, move or remove any Facilities located within the Rights-of-Way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency.

(2) The City shall not be liable for any damage to or loss of Facilities within the Rights-of-Way as a result of or in connection with any public works, public improvements, construction, grading, excavation, filling, or work of any kind in the Rights-of-Way by or on behalf of the City, except to the extent directly and proximately caused by the sole negligence, intentional misconduct, or criminal actions of the City, its employees, contractors, or agents. The City shall further not be liable to Franchisee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this 0 except to the extent caused by the sole negligence, intentional misconduct, or criminal actions of the City, its employees, contractors, or agents.

(3) Whenever the construction, installation or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street utilities or City property, the Public Works Director may direct Franchisee, at Franchisee's own expense, to take reasonable action to protect the public, adjacent public places, City property or street utilities, and such action may include compliance within a prescribed time. In the event that Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may access the Facilities and take such reasonable actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or reasonable actions regarded as necessary safety precautions, and Franchisee shall be liable to the City for the costs thereof.

Ordinance No. _____

Sec. 14. Recovery of Costs, Taxes and Fees.

(1) Franchisee shall pay a fee for the actual administrative expenses incurred by the City that are directly related to the receiving and approving this Franchise pursuant to RCW 35.21.860, including the costs associated with the City's legal costs incurred in drafting and processing this Franchise. No permits shall be issued for the installation of authorized Facilities until such time as the City has received payment of this fee. Franchisee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City Staff and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City in accordance with the provisions of 0.

(2) Franchisee shall promptly reimburse the City in accordance with the provisions of 0 and 0 for any and all costs the City reasonably incurs in response to any emergency situation involving Franchisee's Facilities, to the extent said emergency is not the fault of the City. The City agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency situation.

(3) Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an itemized billing for reasonably incurred costs, itemized by project, for Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the Rights of Way. Such costs and expenses shall include, but not be limited to, Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the Rights of Way as the result of the presence of Franchisee's Facilities in the Rights of Way. Such costs and expenses shall also include Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee's Facilities or the routing or rerouting of any utilities so as not to interfere with Franchisee's Facilities.

(4) The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus

Ordinance No. _____

benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. At the City's option, the billing may be on an annual basis, but the City shall provide the Franchisee with the City's itemization of costs, in writing, at the conclusion of each project for information purposes.

(5) Franchisee hereby warrants that its operations as authorized under this Franchise are those of a telephone business as defined in RCW 82.16.010, or service provider as defined in RCW 35.21.860. As a result, the City will not impose a franchise fee under the terms of this Franchise, other than as described herein. The City hereby reserves its right to impose a franchise fee on Franchisee if Franchisee's operations as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply, or if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Franchisee obtain a separate Franchise for its change in use. Nothing contained herein shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, State, or local laws.

(6) Franchisee acknowledges that certain of its business activities may be subject to taxation as a telephone business and that Franchisee shall pay to the City the rate applicable to such taxable services under Chapter 3.68 DMMC, and consistent with state and federal law. The parties agree that if there is a dispute regarding tax payments that the process in Des Moines Municipal Code Chapter 3.68 shall control. In that event, the City may not enforce remedies under 0 or commence a forfeiture or revocation process pursuant to 0 until the dispute is finally resolved either consistent with Chapter 3.68 DMMC or by judicial action and then only if the Franchisee does not comply with such resolution. The parties agree however, that nothing in this Franchise shall limit the City's power of taxation as may exist now or as later imposed by the City. This provision does not limit the City's power to amend Chapter 3.68 DMMC as may be permitted by law.

Sec. 15. Small Cell Facilities.

(1) City Retains Approval Authority. The City shall have the authority at all times to control by appropriately exercised police powers through ordinance or regulation, consistent with 47 U.S.C. § 253, 47 U.S.C. § 332(c)(7) and the laws of the State of

Ordinance No. _____

Washington, the location, elevation, manner of construction, and maintenance of any Small Cell Facilities by Franchisee, and Franchisee shall promptly conform with all such requirements, unless compliance would cause Franchisee to violate other requirements of law. This Franchise does not prohibit the City from exercising its rights under federal, state or local law to deny or give conditional approval to an application for a permit to construct any individual Small Cell Facility.

(2) This Franchise is a City-wide franchise in that it encompasses all Rights of Way within the City, and an amendment to this Franchise shall not be required to authorize Small Cell Facilities at additional locations that have not been previously been identified.

(3) (3)City Approvals and permits. Except as provided in the foregoing paragraph, the granting of this Franchise is not a substitute for any other City required approvals to construct Franchisee's Facilities in the rights-of-way ("City Approvals"). The parties agree that such City Approvals (except right-of-way use permits as described in section 8(2) are not considered use permits, as that term is defined in RCW 35.99.010. These City Approvals do not grant general authorization to enter and utilize the rights-of-way but rather grant Franchisee permission to build its specific Small Cell Facilities. Therefore, City Approvals are not subject to the thirty (30) day issuance requirement described in RCW 35.99.030. The parties recognize that this provision is specifically negotiated as consideration for designating the entire City as the Franchise Area. Such City Approvals shall be issued consistent with the Codes, state and federal laws governing wireless communication facility siting and shall be in addition to any permits required under section 8(2). This section does not affect the thirty (30) day issuance requirement described in RCW 35.99.030 required for use permits such as right-of-way use permits and traffic control permits.

(4) Preference for Existing Infrastructure; Site Specific Agreements.

(a) Franchisee shall utilize existing infrastructure in the City whenever possible and consistent with the design, concealment and siting of the Codes. The erection of new poles or structures in the Right-of-Way may only be permitted if no other alternative space feasible for the installation of the Facility is available. In the event that existing infrastructure is not available or feasible for a Small Cell Facility, or if the City

Ordinance No. _____

prefers new poles or infrastructure in a particular area of the City, then Franchisee may request the placement of new or replacement structures in the Rights-of-Way consistent with the requirements of the Codes.

(b) Franchisee acknowledges and agrees that if Franchisee requests to place new structures or replacement structures which are over sixty (60) feet in the Rights-of-Way then Franchisee may be required to enter into a site-specific agreement consistent with RCW 35.21.860 in order to construct such Facilities in the Right of Way. Such agreements may require a site-specific charge paid to the City. The approval of a site-specific agreement is at the discretion of each of the parties thereto.

(c) Replacement poles or structures which remain substantially similar to existing structures or deviate in height or design as permitted within the Codes are permissible provided that Franchisee, or the pole owner at the Franchisee's request, removes the old pole or structure promptly, but no more than thirty (30) days after the installation of the replacement pole or structure.

(d) This 0 does not place an affirmative obligation on the City to allow the placement of new infrastructure on public property or in the Rights-of-Way, nor does it relieve Franchisee from any Code provision related to the siting of wireless facilities.

(5) Concealment. Franchisee shall construct its Facilities consistent with the concealment or stealth requirements as described in the Codes or in the applicable permit(s), in order to minimize the visual impact of such Facilities.

(6) Eligible Facilities Requests. The parties acknowledge that it is the intent of this Franchise to provide general authorization to use the Rights-of-Way for Small Cell Facilities. The designs approved by the City for the installation of Small Cell Facilities, including the dimensions and number of antennas and equipment boxes and the pole height are intended and stipulated to be concealment features when considering whether a proposed modification is a substantial change under Section 6409(a) of the Spectrum Act, 47 U.S.C. § 1455(a).

(7) Inventory. Franchisee shall maintain a current inventory of Small Cell Facilities throughout the Term of this Franchise. Franchisee shall provide to the City a copy of the

Ordinance No. _____

inventory report no later than one hundred eighty (180) days after the Effective Date of this Franchise and shall be updated within thirty (30) days of a reasonable request by the City. The inventory report shall include GIS coordinates, date of installation, type of pole used for installation, description/type of installation for each Small Cell Facility installation and photographs taken before and after the installation of the Small Cell Facility and taken from the public street. Small Cell Facilities that are considered Deactivated Facilities, as described in Section 19.1, shall be included in the inventory report and Franchisee shall provide the same information as is provided for active installations as well as the date the Facilities were deactivated and the date the Deactivated Facilities were removed from the Right-of-Way. The City shall compare the inventory report to its records to identify any discrepancies, and the parties will work together in good faith to resolve any discrepancies. Franchisee is not required to report on future inventory reports any Deactivated Facilities which were removed from the Right-of-Way since the last reported inventory and may thereafter omit reference to the Deactivated Facilities.

(8) Unauthorized Facilities. Any Small Cell Facilities installations in the City Right-of-Way that were not authorized under this Franchise or other required City Approval ("Unauthorized Facilities") will be subject to the payment of an Unauthorized Facilities charge by Franchisee. City shall provide written notice to Franchisee of any Unauthorized Facilities identified by City staff and Franchisee shall have sixty (60) days thereafter in which to either (i) establish that the site was authorized, or (ii) submit a complete application to the City for approval of the Unauthorized Facilities. Failure to do either of the foregoing within such 60-day period (or longer than sixty (60) days if necessary upon the City's consent so long as Franchisee can demonstrate that it has submitted a complete small cell permit application to the City) will result in the imposition of an Unauthorized Facilities charge in the amount of One Thousand and 00/100 Dollars (\$1000.00) per Unauthorized Facility, per day starting on the sixty-first (61st) day, or the first day after the expiration of any extended period granted by the City, until such time as Franchisee has obtained approval for the Unauthorized Facilities or has otherwise removed such Facilities. If the City does not approve the application for such Unauthorized Facilities and Franchisee is unsuccessful in an appeal (if an appeal is requested), then Franchisee shall remove the Unauthorized Facilities from the City's Right-of-Way within thirty (30) days after the expiration of all appeal periods for such denial. This

Ordinance No. _____

Franchise remedy is in addition to any other remedy available to the City at law or equity.

(9) Graffiti Abatement. As soon as practical, but not later than fourteen (14) days from the date Franchisee receives notice or is otherwise aware, Franchisee shall remove all graffiti on any of its Small Cell Facilities of which it is the owner of the pole or structure or on the Small Cells Facilities themselves attached to a third-party pole (i.e. graffiti on the shrouding protecting the radios). The foregoing shall not relieve Franchisee from complying with any City graffiti or visual blight ordinance or regulation.

(10) Emissions Reports.

(a) Franchisee is obligated to comply with all laws relating to allowable presence of or human exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs") on or off any poles or structures in the Rights-of-Way, including all applicable FCC standards, whether such RF or EMF presence or exposure results from the Small Cell Facility alone or from the cumulative effect of the Small Cell Facility added to all other sources operated by Franchisee or on behalf of Franchisee on or near the specific pole or structure.

(b) Franchisee must provide to the City the results of an emissions report (the "Emissions Report") from a licensed professional engineer analyzing whether RF and EMF emissions at the proposed Small Cell Facility locations would comply with FCC standards. Franchisee may provide one Emissions Report within the same batch of applications if Franchisee is using the same Small Cell Facility configuration for all installations within that batch, or may submit one Emissions Report for each subgroup installation identified in the batch.

(c) Nothing in this Franchise prohibits the City from requiring periodic testing of Franchisee's Facilities. The City may inspect any of Franchisee's Facilities and equipment located in the Rights-of-Way. If the City discovers that the emissions from a Facility exceeds the FCC standards, then the City may order Franchisee to immediately turn off the Facility or portion thereof committing the violation, until the emissions exposure is remedied. Such notification shall be made orally by calling 1-800-264-6620 and by written notice pursuant to 0. Franchisee is required

to promptly turn off that portion of the Facility that is in violation, no later than forty-eight (48) hours after receipt of oral notice oral notice. If Franchisee's Facilities are found to exceed FCC standards, then Franchisee shall reimburse the City for any costs incurred by the City for testing the Facility and providing notice as described in 0 and 0.

(11) Interference with Public Facilities. Franchisee's Small Cell Facilities shall not physically interfere or cause harmful interference, as defined in 47 CFR 15.3(m), with any City operations (including, but not limited to, traffic lights, public safety radio systems, or other City communications infrastructure), or the emergency communications operation or equipment. If the Small Cell Facilities cause such harmful interference, Franchisee shall respond to the City's request to address the source of the interference as soon as practicable, but in no event later than forty-eight (48) hours after receipt of notice. The City may require, by written notice, that Franchisee power down the specific Small Cell Facilities, or portion thereof, causing such interference if such interference is not remedied within forty-eight (48) hours after notice. If, within thirty (30) days after receipt of such written notice from the City of such interference, Franchisee has not abated such interference, such Small Cell Facility may be deemed an Unauthorized Facility and subject to the provisions of 0 or removal by the City consistent with 0.

(12) Interference with Other Facilities. Franchisee is solely responsible for determining whether its Small Cell Facilities interfere with telecommunications facilities of other utilities and franchisees within the Rights-of-Way. Franchisee shall comply with the rules and regulations of the Federal Communications Commission regarding radio frequency interference when siting its Small Cell Facilities within the Franchise Area. Franchisee, in the performance and exercise of its rights and obligations under this Franchise shall not physically or technically interfere in any manner with the existence and operation of any and all existing utilities, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliners, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as expressly permitted by applicable law or this Franchise.

Sec. 16. Indemnification.

(1) Franchisee releases, covenants not to bring suit, and agrees to indemnify, defend, and hold harmless the City, its officers, employees, agents, volunteers and representatives from any and all claims, costs, judgments, awards, or liability to any person, for injury or death of any person, or damage to property caused by or arising out of any acts or omissions of Franchisee, its agents, servants, officers, or employees in the performance of this Franchise and any rights granted within this Franchise. Further, Franchisee shall indemnify, defend and hold harmless the City, its officers, employees, agents, volunteers and representatives from any and all claims, costs, judgments, awards or liability to any person arising from radio frequency emissions or radiation emitted from Franchisee's Facilities located in the Rights-of-Way, regardless of whether Franchisee's equipment complies with applicable federal statutes and/or FCC regulations related thereto. These indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

(2) Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this 0.

(3) The City shall promptly notify Franchisee of any claim or suit and request in writing that Franchisee indemnify the City. Franchisee may choose counsel to defend the City subject to this 0. City's failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. In the event that Franchisee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Franchise, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, Franchisee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of

interest between the City and the counsel selected by Franchisee to represent the City, then upon the prior written approval and consent of Franchisee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and Franchisee shall pay the reasonable fees and expenses of such separate counsel, except that Franchisee shall not be required to pay the fees and expenses of separate counsel on behalf of the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Franchisee. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

(4) Except to the extent that damage or injury arises from the sole negligence or willful misconduct of the City, its officers, officials, employees or agents, the obligations of Franchisee under the indemnification provisions of this 0, and any other indemnification provision herein shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the City, its officers, officials, employees or agents and the Franchisee. Notwithstanding the proceeding sentence, to the extent the provisions of RCW 4.24.115 are applicable, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein. It is further specifically and expressly understood that the indemnification provided constitutes Franchisee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification, relating solely to indemnity claims made by the City directly against the Franchisee for claims made against the City by Franchisee's employees. This waiver has been mutually negotiated by the parties.

(5) Notwithstanding any other provisions of this 0, Franchisee assumes the risk of damage to its Facilities located in the Rights of Way and upon City-owned property from activities conducted by the City, its officers, agents, employees,

volunteers, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any solely negligent, willful misconduct, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. Franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages, lost profits and consequential damages, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful misconduct on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors.

(6) The provisions of this Section 16 shall survive the expiration, revocation, or termination of this Franchise.

Sec. 17. Insurance.

(1) Franchisee shall procure and maintain for so long as Franchisee has Facilities in the Public Ways, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of rights, privileges and authority granted to Franchisee. Franchisee shall require that every subcontractor maintain substantially the same insurance coverage with substantially the same policy limits as required of Franchisee. Franchisee shall procure insurance from insurers with a current A.M. Best rating of not less than A-. Franchisee shall provide a copy of a certificate of insurance and blanket additional insured endorsement to the City for its inspection at the time of acceptance of this Franchise, and such insurance certificate shall evidence a policy of insurance that includes:

(a) Automobile Liability insurance with limits of no less than \$5,000,000 combined single limit per occurrence for bodily injury and property damage.

(b) Commercial General Liability insurance, written on an occurrence basis with limits of no less than \$5,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general aggregate including personal

and advertising injury, blanket contractual; premises;- operations; independent contractors; products and completed operations; and broad form property damage; explosion, collapse and underground (XCU)

(c) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and Employer's Liability with a limit of \$1,000,000 each accident/disease/policy limit and

(d) Excess Umbrella liability policy with limits of no less than \$5,000,000 per occurrence and in the aggregate.

(2) Payment of deductible or self-insured retention shall be the sole responsibility of Franchisee. Franchisee may utilize primary and umbrella liability insurance policies to satisfy the insurance policy limits required in this 0. Franchisee's umbrella liability insurance policy shall provide "follow form" coverage over its primary liability insurance policies.

(3) The insurance policies, with the exception of Workers' Compensation and Employer's Liability obtained by Franchisee shall include the City, its officers, officials, employees, agents, and volunteers ("Additional Insureds"), as an additional insured with regard to activities performed by or on behalf of Franchisee. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability. Franchisee shall provide to the City upon acceptance a certificate of insurance and blanket additional insured endorsement. Receipt by the City of any certificate showing less coverage than required is not a waiver of Franchisee's obligations to fulfill the requirements. Franchisee's insurance shall be primary insurance with respect to the Additional Insureds. Any insurance maintained by the Additional Insureds shall be in excess of Franchisee's insurance and shall not contribute with it.

(4) Upon receipt of notice from its insurer(s) Franchisee shall provide the City with thirty (30) days prior written notice of any cancellation of any insurance policy, required pursuant to this 0. Franchisee shall, prior to the effective date of such cancellation, obtain replacement insurance policies meeting the requirements of this 0. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this 0 shall be

Ordinance No. _____

considered a material breach of this Franchise and subject to the City's election of remedies described in 0 below. Notwithstanding the cure period described in 0, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

(5) Franchisee's maintenance of insurance as required by this Section 17 shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee.

(6) The City may review all insurance limits once every calendar year during the Term and may make reasonable adjustments in the limits upon thirty (30) days' prior written notice to Franchisee. Franchisee shall then issue a certificate of insurance to the City showing compliance with these adjustments. Upon request by the City, Franchisee shall furnish certified copies of all required insurance policies, including endorsements, required in this Franchise and evidence of all contractors' coverage.

(7) As of the Effective Date of this Franchise, Franchisee is not self-insured. Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a later date. Franchisee shall comply with the following: (i) provide the City, upon request, a copy of Franchisee's, or its parent company's, most recent audited financial statements, if such financial statements are not otherwise publicly available; (ii) Franchisee or its parent company is responsible for all payments within the self-insured retention; and (iii) Franchisee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise.

Sec. 18. Abandonment of Franchisee's Telecommunications Network.

(1) Where any Facilities or portions of Facilities are no longer needed, and their use is to be discontinued, the Franchisee shall immediately report such Facilities in writing ("Deactivated Facilities") to the Public Works Director. This notification is in addition to the inventory revisions addressed in 0. Deactivated Facilities, or portions thereof, shall be completely removed within ninety (90) days and the site, pole or infrastructure restored to its pre-existing condition.

(2) If Franchisee leases a structure from a landlord and such landlord later abandons the structure, Franchisee shall

remove its Facilities from the abandoned structure within ninety (90) days of such notification from the landlord at no cost to the City and shall remove the pole if so required by the landlord. Notwithstanding the preceding sentence, the timelines determined by the City for relocation projects described in 0 above shall apply.

(3) Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the Rights-of-Way within ninety (90) days of receiving written notice from the Public Works Director or his/her designee. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Any plan for abandonment or removal of Franchisee's Facilities must be first approved by the Public Works Director or his/her designee, and all necessary permits must be obtained prior to such work. Franchisee shall restore the Rights-of-Way to at least the same condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or any person doing work for Franchisee. Franchisee shall be solely responsible for all costs associated with removing its Facilities.

(4) Notwithstanding 0 above, the City may permit Franchisee's Facilities to be abandoned in place in such a manner as the City may prescribe. Upon permanent abandonment, and Franchisee's agreement to transfer ownership of the Facilities to the City, Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City.

(5) Any Facilities which are not removed within one hundred and eighty (180) days of either the date of termination or revocation of this Franchise or the date the City issued a permit authorizing removal, whichever is later, shall automatically become the property of the City. Any costs incurred by the City in safeguarding such Facilities or removing the Facilities shall be reimbursed by Franchisee. Nothing contained within this 0 shall prevent the City from compelling Franchisee to remove any such Facilities through judicial action when the City has not permitted Franchisee to abandon said Facilities in place.

(6) The provisions of this Section 18 shall survive the expiration, revocation, or termination of this Franchise and for so long as Franchisee has Facilities in Rights-of-Way.

Sec. 19. Bonds

(1) Franchisee shall furnish a performance bond ("Performance Bond") written by a corporate surety reasonably acceptable to the City equal to at least 120% of the estimated cost of constructing Franchisee's Facilities within the Rights-of-Way of the City prior to commencement of any such work or such other amount as deemed appropriate by the Public Works Director. The Performance Bond shall guarantee the following: (1) timely completion of construction; (2) construction in compliance with all applicable plans, permits, technical codes, and standards; (3) proper location of the Facilities as specified by the City; (4) restoration of the Rights-of-Way and other City properties affected by the construction; (5) submission of as-built drawings after completion of construction; and (6) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work which could be asserted against the City or City property. Said bond must remain in full force until the completion of construction, including final inspection, corrections, and final approval of the work, recording of all easements, provision of as-built drawings, and the posting of a Maintenance Bond as described in 0. Compliance with the Performance Bond requirement of the City's current Design and Construction Standards shall satisfy the provisions of this 0. In lieu of a separate Performance Bond for individual projects involving work in the Franchise Area, Franchisee may satisfy the City's bond requirements by posting a single on-going performance bond in an amount approved by City.

(2) Maintenance Bond. Franchisee shall furnish a two (2) year maintenance bond ("Maintenance Bond"), or other surety acceptable to the City, at the time of final acceptance of construction work on Facilities within the Rights-of-Way. The Maintenance Bond amount will be equal to ten percent (10%) of the documented final cost of the construction work. The Maintenance Bond in this 0 must be in place prior to City's release of the bond required by 0. Compliance with the Maintenance Bond requirement of the City's current Design and Construction Standards shall satisfy the provisions of this 0.

(3) Franchise Bond. Franchisee shall provide City with a bond in the amount of Fifty Thousand Dollars (\$50,000.00) ("Franchise Bond") running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to City. In the event Franchisee shall fail to substantially comply with any one or more of the provisions of this Franchise following notice and a reasonable opportunity to cure, then there shall be

recovered jointly and severally from Franchisee and the bond any actual damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described. Franchisee specifically agrees that its failure to comply with the terms of this 0 shall constitute a material breach of this Franchise. The amount of the bond shall not be construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Sec. 20. Remedies to Enforce Compliance.

(1) The City may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling Franchisee to comply with the provisions of the Franchise and to recover damages and costs incurred by the City by reason of Franchisee's failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force Franchisee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein. Provided, further, that by entering into this Franchise, it is not the intention of the City or Franchisee to waive any other rights, remedies, or obligations as otherwise provided by law equity, or otherwise, and nothing contained here shall be deemed or construed to affect any such waiver.

(2) If Franchisee shall violate, or fail to comply with any of the provisions of this Franchise, or should it fail to heed or comply with any notice given to Franchisee under the provisions of this Franchise, the City shall provide Franchisee with written notice specifying with reasonable particularity the nature of any such breach and Franchisee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the City may specify a longer cure period, and condition the extension of time on Franchisee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or Franchisee does not comply with the specified conditions, the City may, at its discretion, (1) commence revocation proceedings, pursuant to Section 21, or (2) claim damages of Two Hundred Fifty

Ordinance No. _____

Dollars (\$250.00) per day against the Franchise Bond set forth in 0, or (3) suspend the issuance of additional permits, or (4) pursue other remedies as described in 0 above.

Sec. 21. Forfeiture and Revocation. If Franchisee willfully violates or fails to comply with any material provisions of this Franchise, then at the election of the Des Moines City Council after at least thirty (30) days written notice to Franchisee specifying the alleged violation or failure and an opportunity to cure, the City may revoke all rights conferred and this Franchise may be revoked by the City Council after a hearing held upon such notice to Franchisee. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within thirty (30) days after the hearing, the Des Moines City Council, on the basis of the record, will make the determination as to whether there is cause for revocation, whether the Franchise will be terminated, or whether lesser sanctions should otherwise be imposed. The Des Moines City Council may in its sole discretion fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the Des Moines City Council does not grant any additional period, the Des Moines City Council may by resolution declare the Franchise to be revoked and forfeited or impose lesser sanctions. If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided Franchisee is otherwise in compliance with the Franchise.

Sec. 22. Non-Waiver. The failure of the City to insist upon strict performance of any of the covenants and agreements of this Franchise or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such covenants, agreements or option or any other covenants, agreements or option.

Sec. 23. City Ordinances and Regulations. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations the location, elevation, manner of construction and maintenance of Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other

Ordinance No. _____

requirements of law. In the event of a conflict between the provisions of this Franchise and any other generally applicable ordinance(s) enacted under the City's police power authority, such other ordinances(s) shall take precedence over the provisions set forth herein.

Sec. 24. Cost of Publication. The cost of publication of this Franchise shall be borne by Franchisee.

Sec. 25. Acceptance. Franchisee shall execute and return to the City its execution and acceptance of this Franchise in the form attached hereto as Exhibit A. In addition, Franchisee shall submit proof of insurance obtained and additional insured endorsement pursuant to 0, any Performance Bond, if applicable, pursuant to 0 and the Franchise Bond required pursuant to 0. The administrative fee pursuant to 0 is due within thirty (30) days of receipt of the invoice from the City.

Sec. 26. Survival. All of the provisions, conditions, and requirements of 0, 0, 0, 0, 0, 0, 0, 0, and 0 of this Franchise shall be in addition to any and all other obligations and liabilities Franchisee may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to Franchisee for the use of the Franchise Area, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of Franchisee and all privileges, as well as all obligations and liabilities of Franchisee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned where Franchisee is named herein.

Sec. 27. Assignment.

(1) This Franchise may not be directly or indirectly assigned, transferred, or disposed of by sale, merger, consolidation or other act of Franchisee, by operation of law or otherwise, unless approved in writing by the City, which approval shall not be unreasonably withheld, conditioned or delayed. The above notwithstanding, Franchisee may freely assign this Franchise in whole or in part to a parent, subsidiary, or affiliated entity, unless there is a change of control as described in 0 below, or for collateral security purposes. Franchisee shall provide prompt, written notice to the City of any such assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured

Ordinance No. _____

party elects to realize upon the collateral. For purposes of this 0, no assignment or transfer of this Franchise shall be deemed to occur based on the public trading of Franchisee's stock; provided, however, any tender offer, merger, or similar transaction resulting in a change of control shall be subject to the provisions of this Franchise.

(2) Any transactions that singularly or collectively result in a change of more than fifty percent (50%) of the: ultimate ownership or working control of Franchisee, ownership or working control of the Facilities, ownership or working control of affiliated entities having ownership or working control of Franchisee or of the Facilities, or of control of the capacity or bandwidth of Franchisee's Facilities, shall be considered an assignment or transfer requiring City approval. Transactions between affiliated entities are not exempt from City approval if there is a change in control as described in the preceding sentence. Franchisee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of Franchisee. Every change, transfer, or acquisition of control of Franchisee shall cause a review of the proposed transfer. The City shall approve or deny such request for an assignment or transfer requiring City's consent within one-hundred twenty (120) days of a completed application from Franchisee, unless a longer period of time is mutually agreed to by the parties or when a delay in the action taken by the City is due to the schedule of the City Council and action cannot reasonably be obtained within the one hundred twenty (120) day period. In the event that the City adopts a resolution denying its consent and such change, transfer, or acquisition of control has been affected, the City may revoke this Franchise, following the revocation procedure described in 0 above. The assignee or transferee must have the legal, technical, financial, and other requisite qualifications to own, hold, and operate Franchisee's Services. Franchisee shall reimburse the City for all direct and indirect costs and expenses reasonably incurred by the City in considering a request to transfer or assign this Franchise, in accordance with the provisions of 0 and 0, and shall pay the applicable application fee.

(3) Franchisee may, without prior consent from the City: (i) lease the Facilities, or any portion, to another person; (ii) grant an indefeasible right of user interest in the Facilities, or any portion, to another person; or (iii) offer to provide capacity or bandwidth in its Facilities to another person, provided further, that Franchisee shall at all times retain exclusive control over its Facilities and remain fully responsible for compliance with

Ordinance No. _____

the terms of this Franchise, and Franchisee shall furnish, upon request from the City, proof of any such lease or agreement, to include the first and last page the lease or agreement, provided that Franchisee may redact the name, street address (except for City and zip code), Social Security Numbers, Employer Identification Numbers or similar identifying information, and other information considered confidential under applicable laws provided in such lease or agreement, and the lessee complies, to the extent applicable, with the requirements of this Franchise and applicable City codes. Franchisee's obligation to remain fully responsible for compliance with the terms under this 0 shall survive the expiration of this Franchise but only if and to the extent and for so long as Franchisee is still the owner or has exclusive control over the Facilities used by a third party.

Sec. 28. Extension. If this Franchise expires without renewal, the City may, subject to applicable law:

(1) Allow Franchisee to maintain and operate its Facilities on a month-to-month basis, provided that Franchisee maintains insurance for such Facilities during such period and continues to comply with this Franchise; or

(2) The City may order the removal of any and all Facilities at Franchisee's sole cost and expense consistent with 0.

Sec. 29. Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Franchise.

Sec. 30. Eminent Domain. The existence of this Franchise shall not preclude the City from acquiring by condemnation in accordance with applicable law, all or a portion of the Franchisee's Facilities for the fair market value thereof. In determining the value of such Facilities, no value shall be attributed to the right to occupy the area conferred by this Franchise.

Sec. 31. Vacation. If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to the Franchisee by reason of such vacation. The City shall notify the Franchisee in writing not less than sixty (60) days before vacating all or any portion of any such area. The City may, after sixty

Ordinance No. _____

(60) days written notice to the Franchisee, terminate this Franchise with respect to such vacated area.

Sec. 32. Notice. Any notice required or permitted under this Franchise shall be in writing, and shall be delivered personally, delivered by a nationally recognized overnight courier, or sent by registered or certified mail, return receipt requested, to the other party at the address listed below. If such notice, demand or other communication shall be served personally, service shall be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by overnight delivery, it shall be conclusively deemed given the day after it was sent to the party to whom such notice, demand or other communication is to be given. If such notice, demand or other communication is given by mail, it shall be conclusively deemed given three (3) days after it was deposited in the United States mail addressed to the party to whom such notice, demand or other communication is to be given.

CITY OF DES MOINES:

Attn: City Manager
21630 11th Ave S, Suite A
Des Moines, WA 98198

Franchisee:

Attn: CFO
Address: 3030 Warrenville Road,
Suite 340
Lisle, Illinois 60532

With a copy to:

CITY OF DES MOINES

Attn: City Clerk
21630 11th Ave S, Suite A
Des Moines, WA 98198

With a Copy to: General Counsel
at same address

Sec. 33. Severability. If any section, sentence, clause or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this Franchise materially affected by such court's ruling.

Sec. 34. Compliance with All Applicable Laws. Franchisee agrees to comply with all present and future federal and state laws, ordinances, rules and regulations. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of

Ordinance No. _____

the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations the location, elevation, manner of construction and maintenance of Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. Franchisee further expressly acknowledges that following the approval of this Franchise, the City may modify its Codes to address small cell deployment and such Code modifications shall apply to Franchisee's Facilities, except to the extent of a vested right or right under state or federal law. In the event of a conflict between the provisions of this Franchise and any other generally applicable ordinance(s) enacted under the City's police power authority, such other ordinances(s) shall take precedence over the provisions set forth herein. Notwithstanding the foregoing, Franchisee shall not be required to comply with any new ordinances to the extent that they impact existing Facilities to which Franchisee has a vested right in accordance with the vested rights doctrine under Washington case law or as codified at RCW 19.27.095.

Sec. 35. Amendment. The City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City ordinance enacted pursuant to such federal or state statute or regulation upon providing Franchisee with ninety (90) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee makes a written request for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, the parties shall submit the issue to non-binding mediation. If such mediation is unsuccessful, the parties may then submit the issue to a court of competent jurisdiction.

Sec. 36. Attorneys' Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the prevailing party shall be entitled to recover all of its costs and expenses, including such sum as the court may judge as reasonable for attorneys' fees, costs, expenses and attorneys' fees upon appeal of any judgment or ruling.

Ordinance No. _____

Sec. 37. Hazardous Substances. Franchisee shall not introduce or use any hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall Franchisee allow any of its agents, contractors or any person under its control to do the same. Franchisee will be solely responsible for and will defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from and against any and all claims, costs and liabilities including reasonable attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the property associated with Franchisee's use, storage, or disposal of hazardous substances, whether or not intentional, and the use, storage or disposal of such substances by Franchisee's agents, contractors or other persons acting under Franchisee's control, whether or not intentional.

Sec. 38 Licenses, Fees and Taxes. Prior to constructing any improvements, Franchisee shall obtain a business or utility license from the City. Franchisee shall pay promptly and before they become delinquent, all taxes on personal property and improvements owned or placed by Franchisee and shall pay all license fees and public utility charges relating to the conduct of its business, shall pay for all permits, licenses and zoning approvals, shall pay any other applicable tax unless documentation of exemption is provided to the City and shall pay utility taxes and license fees imposed by the City.

Sec. 39. Miscellaneous.

(1) City and Franchisee respectively represent that its signatory is duly authorized and has full right, power and authority to execute this Franchise.

(2) This Franchise shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington, or King County Superior Court.

(3) Section captions and headings are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

(4) Where the context so requires, the singular shall include the plural and the plural includes the singular.

(5) Franchisee shall be responsible for obtaining all other necessary approvals, authorizations and agreements from any

Ordinance No. _____

party or entity and it is acknowledged and agreed that the City is making no representation, warranty or covenant whether any of the foregoing approvals, authorizations or agreements are required or have been obtained by Franchisee by any person or entity.

(6) This Franchise may be enforced at both law and equity.

(7) Franchisee acknowledges that it, and not the City, shall be responsible for the premises and equipment's compliance with all marking and lighting requirements of the FAA and the FCC. Franchisee shall indemnify and hold the City harmless from any fines or other liabilities caused by Franchisee's failure to comply with such requirements. Should Franchisee or the City be cited by either the FCC or the FAA because the Facilities or the Franchisee's equipment is not in compliance and should Franchisee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may either terminate this Franchise immediately on notice to the Franchisee or proceed to cure the conditions of noncompliance at the Franchisee's expense.

Sec. 40. Ordinance Effective Date. This Ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title ("Effective Date").

PASSED BY the City Council of the City of Des Moines this _____ day of _____, 2019 and signed in authentication thereof this _____ day of _____, 2019.

M A Y O R

APPROVED AS TO FORM:

City Attorney

ATTEST:

Ordinance No. _____

City Clerk

Published:

**LEGAL NOTICE
SUMMARY OF ADOPTED ORDINANCE
CITY OF DES MOINES**

ORDINANCE NO. _____, Adopted _____, 2019.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This Ordinance grants to Extenet Systems, Inc. and its affiliates, successors and assigns, the right, privilege, authority and nonexclusive Franchise for ten (10) years, to construct, maintain, operate, replace, and repair a telecommunications network, in, across, over, along, under, through and below certain designated public rights-of-way of the City of Des Moines, Washington.

The full text of the Ordinance will be mailed without cost upon request.

Bonnie Wilkins, CMC
City Clerk

Ordinance No. _____

272

Published: _____, 2019

EXHIBIT A

STATEMENT OF ACCEPTANCE

_____, for itself, its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached hereto and incorporated herein by this reference.

By: _____

Date: _____

Name: _____

Title: _____

STATE OF _____)

) ss.

COUNTY OF _____)

Ordinance No. _____

On this _____ day of _____, 201_, before me the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared, _____ of _____, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date hereinabove set forth.

Signature

NOTARY PUBLIC in and for the State of _____, residing at _____

MY COMMISSION EXPIRES: _____

THIS PAGE LEFT INTENTIONALLY BLANK

**NW-WA-WESTWA-51001L
SE90XS157-L
23616 16TH AVE S
DES MOINES, WA 98198**

SITE TYPE: WOOD POLE IN PROW
POLE REPLACEMENT: NO
POWER: PUGET SOUND ENERGY
CARRIER: SPRINT

LOCAL MAP

NOT TO SCALE



VICINITY MAP

NOT TO SCALE



CODE COMPLIANCE

ALL WORK AND MATERIALS SHALL BE PERFORMED AND INSTALLED IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE FOLLOWING CODES AS ADOPTED BY THE LOCAL GOVERNING AUTHORITIES (AS APPLICABLE). NOTHING IN THESE PLANS IS TO BE CONSTRUCTED TO PERMIT WORK NOT CONFORMING TO THESE CODES.

1. 2015 INTERNATIONAL BUILDING CODE
2. 2017 NATIONAL ELECTRICAL SAFETY CODE
3. 2017 NATIONAL ELECTRICAL CODE, OR LATEST NEC VERSION AS ADOPTED BY THE JURISDICTION
4. TIA/EIA-222-G-2 OR LATEST EDITION
5. LOCAL BUILDING/PLANNING CODE

PROJECT DESCRIPTION

THESE DRAWINGS DEPICT THE INSTALLATION OF A WIRELESS TELECOMMUNICATIONS FACILITY IN THE PUBLIC RIGHT OF WAY. HARDWARE AND ANCILLARY EQUIPMENT TO BE INSTALLED AS DESCRIBED HEREIN.

GENERAL PROJECT NOTES

1. PRIOR TO SUBMITTING A BID, THE CONTRACTOR SHALL FAMILIARIZE HIMSELF/HERSELF WITH THE SCOPE OF WORK AND ALL CONDITIONS AFFECTING THE NEW PROJECT.
2. CONTRACTOR SHALL VERIFY ALL FIELD CONDITIONS AND DIMENSIONS OF THE JOB SITE AND CONFIRM THAT WORK AS INDICATED ON THESE CONSTRUCTION DOCUMENTS CAN BE ACCOMPLISHED AS SHOWN PRIOR TO COMMENCEMENT OF ANY WORK.
3. ALL FIELD MODIFICATIONS BEFORE, DURING OR AFTER CONSTRUCTION SHALL BE APPROVED IN WRITING BY AN EXTENET SYSTEMS REPRESENTATIVE.
4. INSTALL ALL EQUIPMENT AND MATERIALS PER THE MANUFACTURER'S RECOMMENDATIONS, UNLESS INDICATED OTHERWISE.
5. NOTIFY EXTENET SYSTEMS, IN WRITING, OF ANY MAJOR DISCREPANCIES REGARDING THE CONTRACT DOCUMENTS, EXISTING CONDITIONS, AND DESIGN INTENT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING CLARIFICATIONS FROM AN EXTENET SYSTEMS REPRESENTATIVE, AND ADJUSTING THE BID ACCORDINGLY.
6. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR ALL CONSTRUCTION MEANS, METHODS, TECHNIQUES, SEQUENCES AND PROCEDURES OF THE WORK UNDER THE CONTRACT.
7. CONTRACTOR SHALL PROTECT ALL EXISTING IMPROVEMENTS AND FINISHES THAT ARE TO REMAIN. CONTRACTOR SHALL REPAIR ANY DAMAGE THAT MAY OCCUR DURING THE CONSTRUCTION TO THE SATISFACTION OF AN EXTENET SYSTEMS REPRESENTATIVE.
8. CONTRACTOR PLANS TO ILLUSTRATE THE AS-BUILT CONDITION OF THE SITE, FOLLOWING THE FINAL INSPECTION BY EXTENET OR SPRINT, THE CONTRACTOR SHALL PROVIDE EXTENET SYSTEMS WITH ONE COPY OF ALL RED-LINED DRAWINGS.
9. VERIFY ALL FINAL EQUIPMENT WITH AN EXTENET SYSTEMS REPRESENTATIVE. ALL EQUIPMENT LAYOUT, SPECS, PERFORMANCE INSTALLATION AND THEIR FINAL LOCATION ARE TO BE APPROVED BY EXTENET SYSTEMS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR COORDINATING HIS/HER WORK WITH THE WORK AND CLEARANCES REQUIRED BY OTHERS RELATED TO SAID INSTALLATIONS.



INTERNAL REVIEW	
CONSTRUCTION SIGNATURE	DATE
APPROVAL SIGNATURE	DATE
REAL ESTATE SIGNATURE	DATE



THESE DRAWINGS ARE COPYRIGHTED AND ARE THE PROPERTY OF NEXIUS SOLUTIONS, INC. AND PRODUCED SOLELY FOR THE USE OF THE CLIENT. ANY REPRODUCTION OR USE OF THE INFORMATION CONTAINED WITHIN SAID DRAWINGS IS PROHIBITED WITHOUT WRITTEN CONSENT BY NEXIUS SOLUTIONS, INC.

PROJECT ID	DRAWN BY	CHKD BY
51001L	CH	CD

REV	DATE	DESCRIPTION
A	04/10/19	COORD FOR REVIEW

IT IS A VIOLATION OF THE LAW FOR ANY PERSON, UNLESS THEY ARE ACTING UNDER THE ORDER OF A LICENSED PROFESSIONAL ENGINEER, TO ALTER THIS DOCUMENT.

EXTENET SYSTEMS (CA) LLC
2000 GROW CANYON PLACE
SUITE 210
SAN RAMON, CA 94583

SITE ADDRESS
ADJACENT TO (IN PROW)
23616 16TH AVE S
DES MOINES, WA 98198

SHEET TITLE
TITLE SHEET

SHEET NUMBER
T-1

SHEET INDEX

SHEET #	SHEET TITLE
T-1	TITLE SHEET
A-1	SITE PLANS & SITE PHOTO
A-2	POLE ELEVATIONS
A-3	POLE ELEVATIONS
RF-1	RF DETAILS & BOM
EQ-1	EQUIPMENT DETAILS
EQ-2	EQUIPMENT DETAILS
E-1	ELECTRICAL DETAILS
G-1	GROUNDING DETAILS
TC-1	TRAFFIC CONTROL PLAN

ASSOCIATED FILES, DOCUMENTS & APPLICATIONS

WINDLOAD FILE	N/A
JPA APPLICATION	N/A
PGE APPLICATION	N/A
PGE SLA	N/A
MUNICIPAL PERMIT	N/A
ELEC INSPECTION	N/A
EXTENET CONTACT (NOD)	866-892-5327 noc@extenetsystems.com
CUSTOMER CONTACT	N/A
FIBER CONST PKG.	N/A

PROJECT INFORMATION

POLE OWNER

COMPANY: PUGET SOUND ENERGY

ENGINEER

ENGINEER COMPANY: NEXIUS SOLUTIONS, INC.
ADDRESS: 2595 NORTH DALLAS PARKWAY, SUITE 300
FRISCO, TX 75034
PHONE: (972) 581-9888

CONTACTS

PROJECT MANAGER
COMPANY: EXTENET SYSTEMS, LLC
CONTACT: KEVIN SHUCARD
ADDRESS: 3030 E WARRENVILLE RD, SUITE 340
USLE, IL 60532
EMAIL: kshucard@extenetsystems.com

APPLICANT COMPANY: EXTENET SYSTEMS, LLC
CONTACT: KEVIN SHUCARD
ADDRESS: 3030 E WARRENVILLE RD, SUITE 340
USLE, IL 60532
EMAIL: kshucard@extenetsystems.com

SITE ACQUISITION COMPANY: NEXIUS SOLUTIONS, INC.
ADDRESS: 2595 NORTH DALLAS PARKWAY, SUITE 300
FRISCO, TX 75034

APPLICANT AGENT COMPANY: NEXIUS SOLUTIONS, INC.
CONTACT: STEPHEN CLARK
ADDRESS: 2595 NORTH DALLAS PARKWAY, SUITE 300
FRISCO, TX 75034
EMAIL: stephen.clark@nexus.com

PROJECT DATA

LATITUDE: 47.389128°
LONGITUDE: -122.312124°
POLE #: 314551-163401
COUNTY: KING COUNTY COUNTY
ZONING JURISDICTION: CITY OF DES MOINES
ZONING DISTRICT: NOT FOUND
NEAREST APN: 1622049187
OCCUPANCY: U, UNMANNED
CONSTRUCTION TYPE: ATTACHMENTS TO A EXISTING WOOD POLE
TITLE 24 REQUIREMENTS: FACILITY IS UNMANNED AND NOT FOR HUMAN HABITATION. THIS PROJECT IS EXEMPT

IF USING 11"x17" PLOT, DRAWINGS WILL BE HALF SCALE

SUBCONTRACTOR SHALL VERIFY ALL PLANS & EXISTING DIMENSIONS & CONDITIONS ON THE JOB SITE & SHALL IMMEDIATELY NOTIFY THE ENGINEER IN WRITING OF ANY DISCREPANCIES BEFORE PROCEEDING WITH THE WORK OR BE RESPONSIBLE FOR SAME



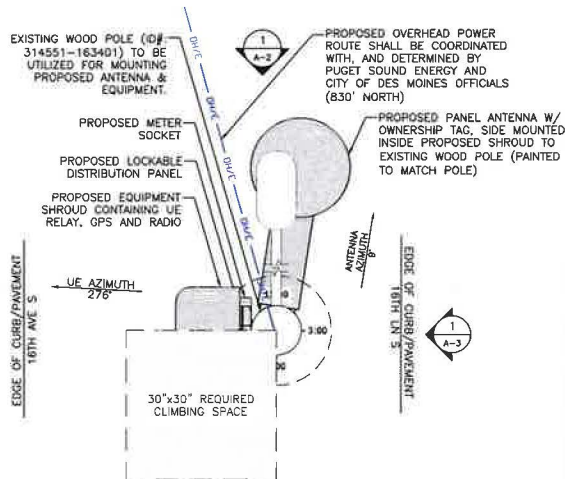
Know what's below.
Call before you dig.



SITE PHOTO

SCALE: N.T.S.

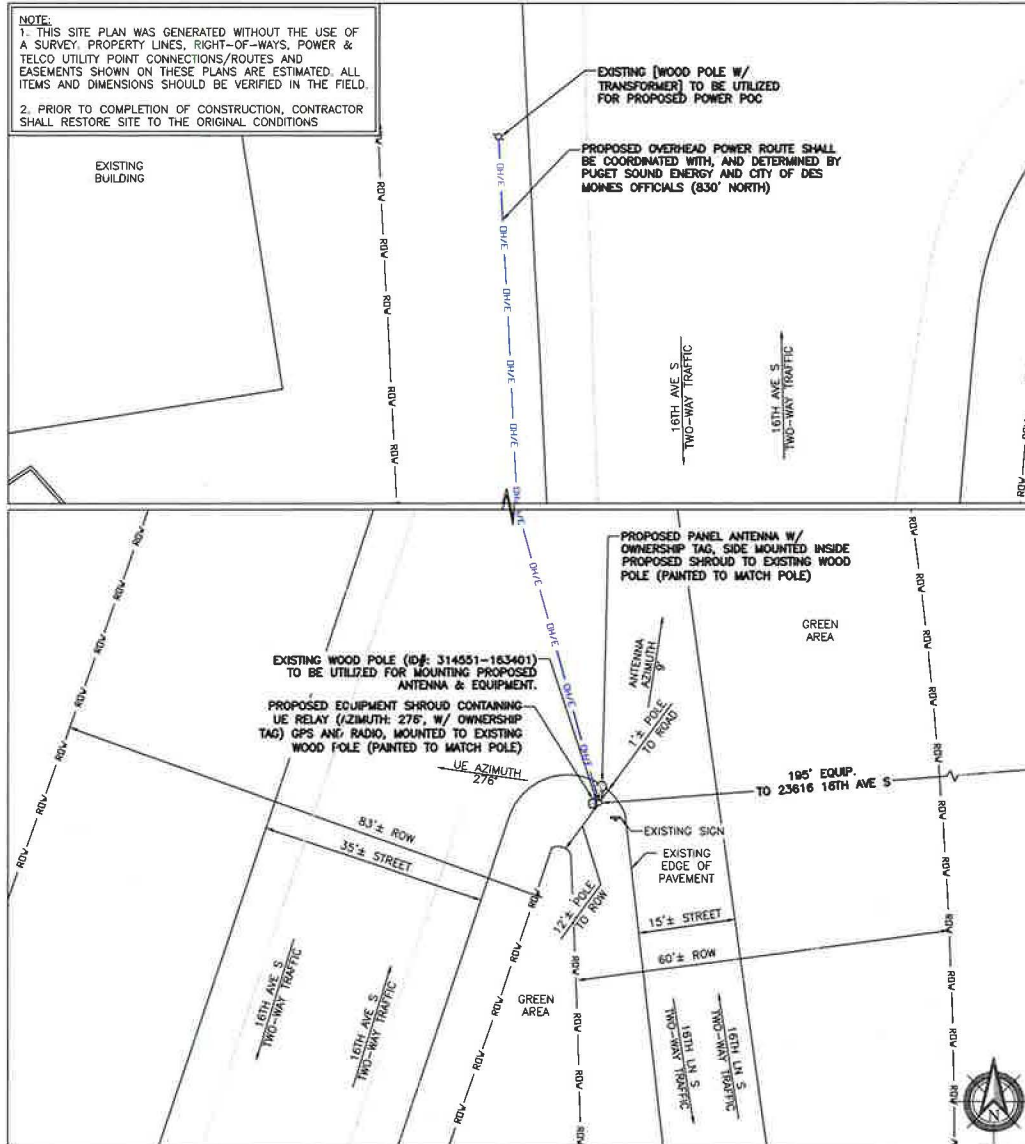
1



ENLARGED SITE PLAN

SCALE: 1/2" = 1'-0"

2



GRAPHIC SCALE: 1:10 (IN FEET)

SITE PLAN

SCALE: 1:10

3



INTERNAL REVIEW	
CONSTRUCTION SIGNATURE	DATE
RF SIGNATURE	DATE
REAL ESTATE SIGNATURE	DATE



THESE DRAWINGS ARE COPYRIGHTED AND ARE THE PROPERTY OF NEXIUS SOLUTIONS, INC. AND PRODUCED SOLELY FOR THE USE OF OUR CLIENT. ANY REPRODUCTION OR USE OF THE INFORMATION CONTAINED WITHIN THIS DRAWING IS PROHIBITED WITHOUT WRITTEN CONSENT BY NEXIUS SOLUTIONS, INC.

EXTENET ID	DRAWN BY	CHECKED BY
51001L	CH	CD

KEY	DATE	DESCRIPTION
A	04/10/19	COORD FOR REVIEW

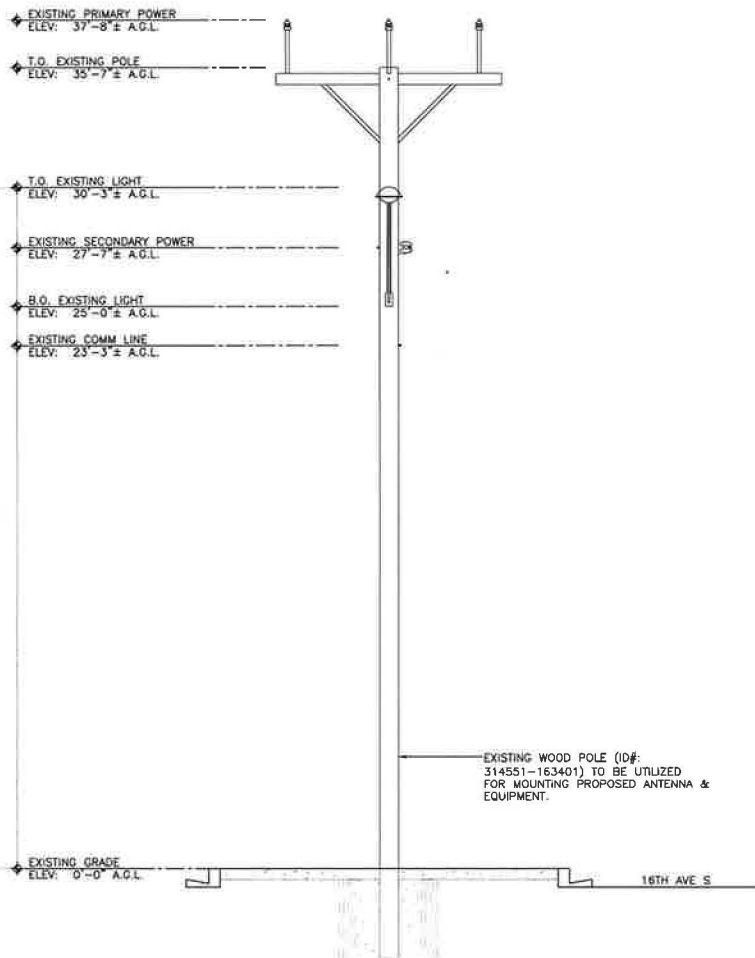
IT IS A VIOLATION OF THE LAW FOR ANY PERSON, UNLESS THEY ARE ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER, TO ALTER THIS DOCUMENT.

EXTENET SYSTEMS (CA) LLC
2000 DROWN CANYON PLACE
SUITE 210
SAN RAMON, CA 94583

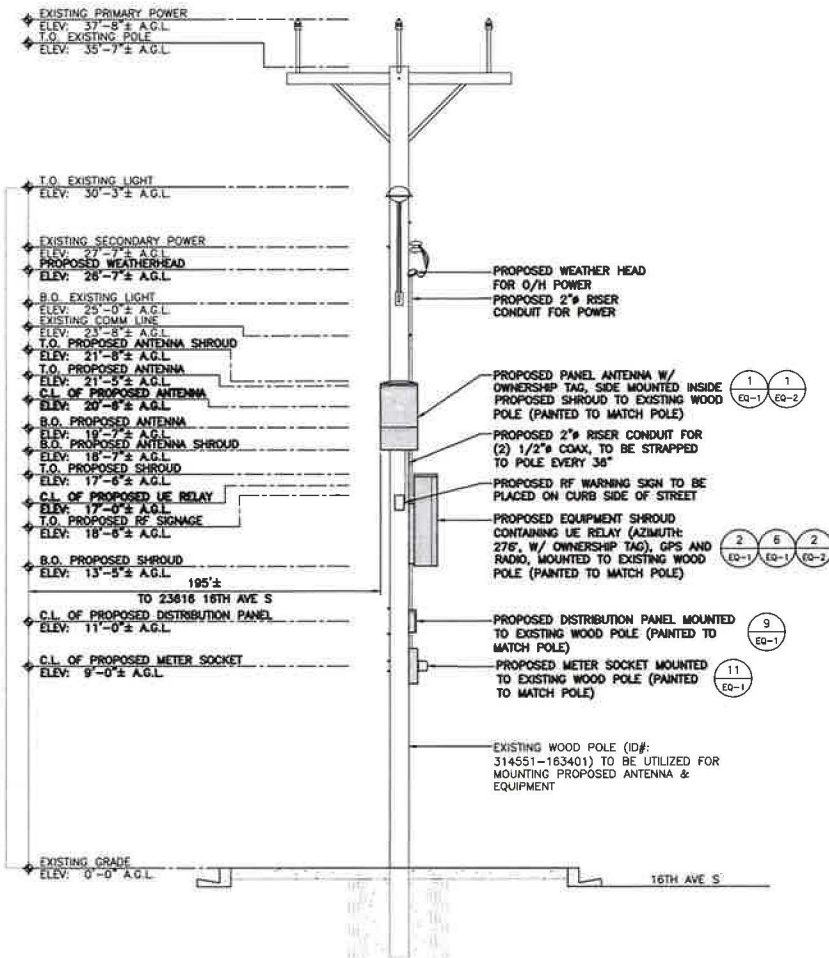
SITE ADDRESS
ADJACENT TO (IN PROW)
23616 16TH AVE S
DES MOINES, WA 98198

SHEET TITLE
OVERALL SITE PLAN

SHEET NUMBER
A-1



DETAIL A: EXISTING SIDE VIEW LOOKING SOUTH



DETAIL B: PROPOSED SIDE VIEW LOOKING SOUTH

GRAPHIC SCALE: 3/8" = 1'-0"

POLE ELEVATIONS

SCALE: 3/8" = 1'-0"

extenet[®]
SYSTEMS

EXTERNAL REVIEW
CONSTRUCTION SIGNATURE DATE
RF SIGNATURE DATE
REAL ESTATE SIGNATURE DATE

NEXIUS
ADVANCED SOLUTIONS, INC.

1544 NORTH DAVENPORT PARKWAY
SUITE 100
MILWAUKEE, WI 53217

THESE DRAWINGS ARE COPYRIGHTED AND ARE THE PROPERTY OF NEXIUS SOLUTIONS, INC. AND PRODUCED SOLELY FOR THE USE OF OUR CLIENT. ANY REPRODUCTION OR USE OF THE INFORMATION CONTAINED WITHIN SAID DRAWINGS IS PROHIBITED WITHOUT WRITTEN CONSENT BY NEXIUS SOLUTIONS, INC.

EXTENET ID: 51001L DRAWN BY: CH CHECKED BY: CD

REV	DATE	DESCRIPTION
A	04/10/19	CD90 FOR REVIEW

IT IS A VIOLATION OF THE LAW FOR ANY PERSON, UNLESS THEY ARE ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER, TO ALTER THIS DOCUMENT.

EXTENET SYSTEMS (A) LLC
2000 CROW CANYON PLACE
SUITE 210
SAN RAMON, CA 94583

SITE ADDRESS
ADJACENT TO (IN PROW)
23616 16TH AVE S
DES MOINES, WA 98198

SHEET TITLE
POLE ELEVATIONS

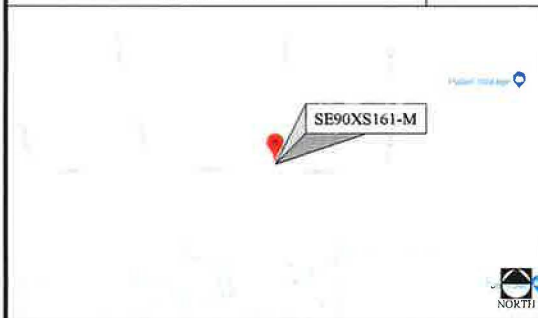
SHEET NUMBER
A-2

**NW-WA-WESTWA-51002
SE90XS161-M
23459 27TH AVE S
(S 236TH ST FRONTAGE)
DES MOINES, WA 98198**

**SITE TYPE: WOOD POLE IN PROW
POLE REPLACEMENT: NO
POWER: PUGET SOUND ENERGY
CARRIER: SPRINT**

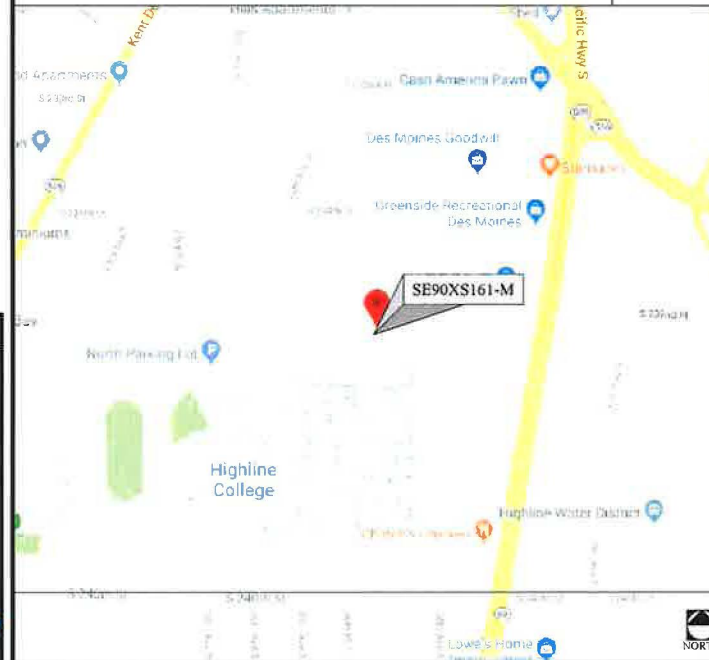
LOCAL MAP

NOT TO SCALE



VICINITY MAP

NOT TO SCALE



CODE COMPLIANCE

- ALL WORK AND MATERIALS SHALL BE PERFORMED AND INSTALLED IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE FOLLOWING CODES AS ADOPTED BY THE LOCAL GOVERNING AUTHORITIES (AS APPLICABLE). NOTHING IN THESE PLANS IS TO BE CONSTRUCTED TO PERMIT WORK NOT CONFORMING TO THESE CODES.
1. 2018 INTERNATIONAL BUILDING CODE
 2. 2017 NATIONAL ELECTRICAL SAFETY CODE
 3. 2017 NATIONAL ELECTRICAL CODE, OR LATEST NEC VERSION AS ADOPTED BY THE JURISDICTION
 4. TIA/EIA-222-G-2 OR LATEST EDITION
 5. LOCAL BUILDING/PLANNING CODE

PROJECT DESCRIPTION

THESE DRAWINGS DEPICT THE INSTALLATION OF A WIRELESS TELECOMMUNICATIONS FACILITY IN THE PUBLIC RIGHT OF WAY. HARDWARE AND ANCILLARY EQUIPMENT TO BE INSTALLED AS DESCRIBED HEREIN.



EXTERNAL REVIEW	DATE
CONSTRUCTION SIGNATURE	DATE
RFI SIGNATURE	DATE
REAL ESTATE SIGNATURE	DATE



ALL OFFICE
7A LYBERRY WAY
WESTFORD, MA 01886
(978) 755-1867

THESE DRAWINGS ARE COPYRIGHTED AND ARE THE PROPERTY OF NEXIUS SOLUTIONS, INC. AND PRODUCED SOLELY FOR THE USE OF OUR CLIENT. ANY REPRODUCTION OR USE OF THE INFORMATION CONTAINED WITHIN THIS DRAWING IS PROHIBITED WITHOUT WRITTEN CONSENT BY NEXIUS SOLUTIONS, INC.

EXTENET ID	DRAWN BY	CHECKED BY
51002	JK	MDC

REV	DATE	DESCRIPTION
A	04/10/19	COORD FOR REVIEW

GENERAL PROJECT NOTES

1. PRIOR TO SUBMITTING A BID, THE CONTRACTOR SHALL FAMILIARIZE HIMSELF/HERSELF WITH THE SCOPE OF WORK AND ALL CONDITIONS AFFECTING THE NEW PROJECT.
2. CONTRACTOR SHALL VERIFY ALL FIELD CONDITIONS AND DIMENSIONS OF THE JOB SITE AND CONFIRM THAT WORK AS INDICATED ON THESE CONSTRUCTION DOCUMENTS CAN BE ACCOMPLISHED AS SHOWN PRIOR TO COMMENCEMENT OF ANY WORK.
3. ALL FIELD MODIFICATIONS BEFORE, DURING OR AFTER CONSTRUCTION SHALL BE APPROVED IN WRITING BY AN EXTENET SYSTEMS REPRESENTATIVE.
4. INSTALL ALL EQUIPMENT AND MATERIALS PER THE MANUFACTURER'S RECOMMENDATIONS, UNLESS INDICATED OTHERWISE.
5. NOTIFY EXTENET SYSTEMS, IN WRITING, OF ANY MAJOR DISCREPANCIES REGARDING THE CONTRACT DOCUMENTS, EXISTING CONDITIONS, AND DESIGN INTENT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING CLARIFICATIONS FROM AN EXTENET SYSTEMS REPRESENTATIVE, AND ADJUSTING THE BID ACCORDINGLY.
6. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR ALL CONSTRUCTION MEANS, METHODS, TECHNIQUES, SEQUENCES AND PROCEDURES OF THE WORK UNDER THE CONTRACT.
7. CONTRACTOR SHALL PROTECT ALL EXISTING IMPROVEMENTS AND FINISHES THAT ARE TO REMAIN. CONTRACTOR SHALL REPAIR ANY DAMAGE THAT MAY OCCUR DURING THE CONSTRUCTION TO THE SATISFACTION OF AN EXTENET SYSTEMS REPRESENTATIVE.
8. CONTRACTOR PLANS TO ILLUSTRATE THE AS-BUILT CONDITION OF THE SITE, FOLLOWING THE FINAL INSPECTION BY EXTENET OR SPRINT, THE CONTRACTOR SHALL PROVIDE EXTENET SYSTEMS WITH ONE COPY OF ALL RED-LINED DRAWINGS.
9. VERIFY ALL FINAL EQUIPMENT WITH AN EXTENET SYSTEMS REPRESENTATIVE. ALL EQUIPMENT LAYOUT, SPECS, PERFORMANCE INSTALLATION AND THEIR FINAL LOCATION ARE TO BE APPROVED BY EXTENET SYSTEMS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR COORDINATING HIS/HER WORK WITH THE WORK AND CLEARANCES REQUIRED BY OTHERS RELATED TO SAID INSTALLATIONS.

IT IS A VIOLATION OF THE LAW FOR ANY PERSON UNLESS THEY ARE ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER TO ALTER THIS DOCUMENT

EXTENET SYSTEMS (CA) LLC
2000 BROWN CANYON PLACE
SUITE 210
SAN RAMON, CA 94583

SITE ADDRESS
ADJACENT TO (IN PROW)
23459 27TH AVE S
(S 236TH ST FRONTAGE)
DES MOINES, WA 98198

SHEET TITLE
TITLE SHEET

SHEET NUMBER
T-1

SHEET INDEX

ASSOCIATED FILES,
DOCUMENTS & APPLICATIONS

SHEET #	SHEET TITLE	WINDLOAD FILE	N/A
T-1	TITLE SHEET		
A-1	SITE PLANS & SITE PHOTO	JPA APPLICATION	N/A
A-2	POLE ELEVATIONS	PGE APPLICATION	N/A
A-3	POLE ELEVATIONS	PGE SLA	N/A
RF-1	RF DETAILS & BOM	MUNICIPAL PERMIT	N/A
EQ-1	EQUIPMENT DETAILS	ELEC INSPECTION	N/A
EQ-2	EQUIPMENT DETAILS	EXTENET CONTACT (NOD)	866-892-5327 noc@extenetsystems.com
E-1	ELECTRICAL DETAILS	CUSTOMER CONTACT	N/A
G-1	GROUNDING DETAILS	FIBER CONST PKG.	N/A
TC-1	TRAFFIC CONTROL PLAN		

IF USING 11"x17" PLOT, DRAWINGS WILL BE HALF SCALE

SUBCONTRACTOR SHALL VERIFY ALL PLANS & EXISTING DIMENSIONS & CONDITIONS ON THE JOB SITE & SHALL IMMEDIATELY NOTIFY THE ENGINEER IN WRITING OF ANY DISCREPANCIES BEFORE PROCEEDING WITH THE WORK OR BE RESPONSIBLE FOR SAME

PROJECT INFORMATION

POLE OWNER		ENGINEER	
COMPANY:	PUGET SOUND ENERGY	ENGINEER COMPANY:	NEXIUS SOLUTIONS, INC.
ADDRESS:		ADDRESS:	7A LYBERRY WAY WESTFORD, MA 01886
PHONE:		PHONE:	(978) 775-1882
CONTACTS		PROJECT DATA	
PROJECT MANAGER		LATITUDE:	47.390219°
COMPANY:		LONGITUDE:	-122.299017°
CONTACT:		POLE #:	314595-163726
ADDRESS:		COUNTY:	KING COUNTY
EMAIL:		ZONING JURISDICTION:	CITY OF DES MOINES
APPLICANT		ZONING DISTRICT:	RS-7,200 (RESIDENTIAL SINGLE FAMILY 7,200)
COMPANY:		NEAREST APN:	1953400510
CONTACT:		OCCUPANCY:	U, UNMANNED
ADDRESS:		CONSTRUCTION TYPE:	ATTACHMENTS TO A EXISTING WOOD POLE
EMAIL:		TITLE 24 REQUIREMENTS:	FACILITY IS UNMANNED AND NOT FOR HUMAN HABITATION. THIS PROJECT IS EXEMPT



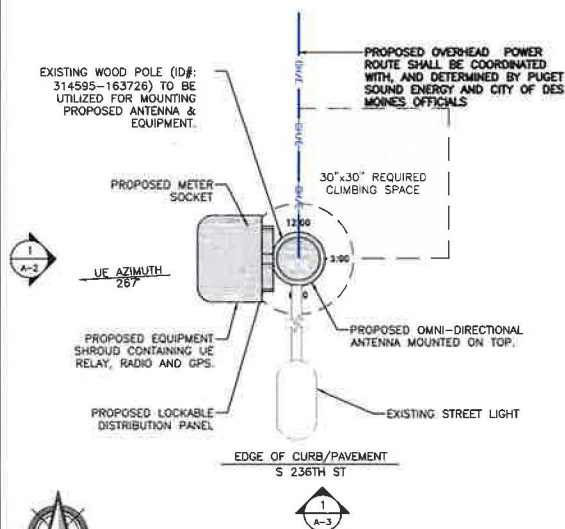
Know what's below.
Call before you dig.



SITE PHOTO

SCALE: N.T.S.

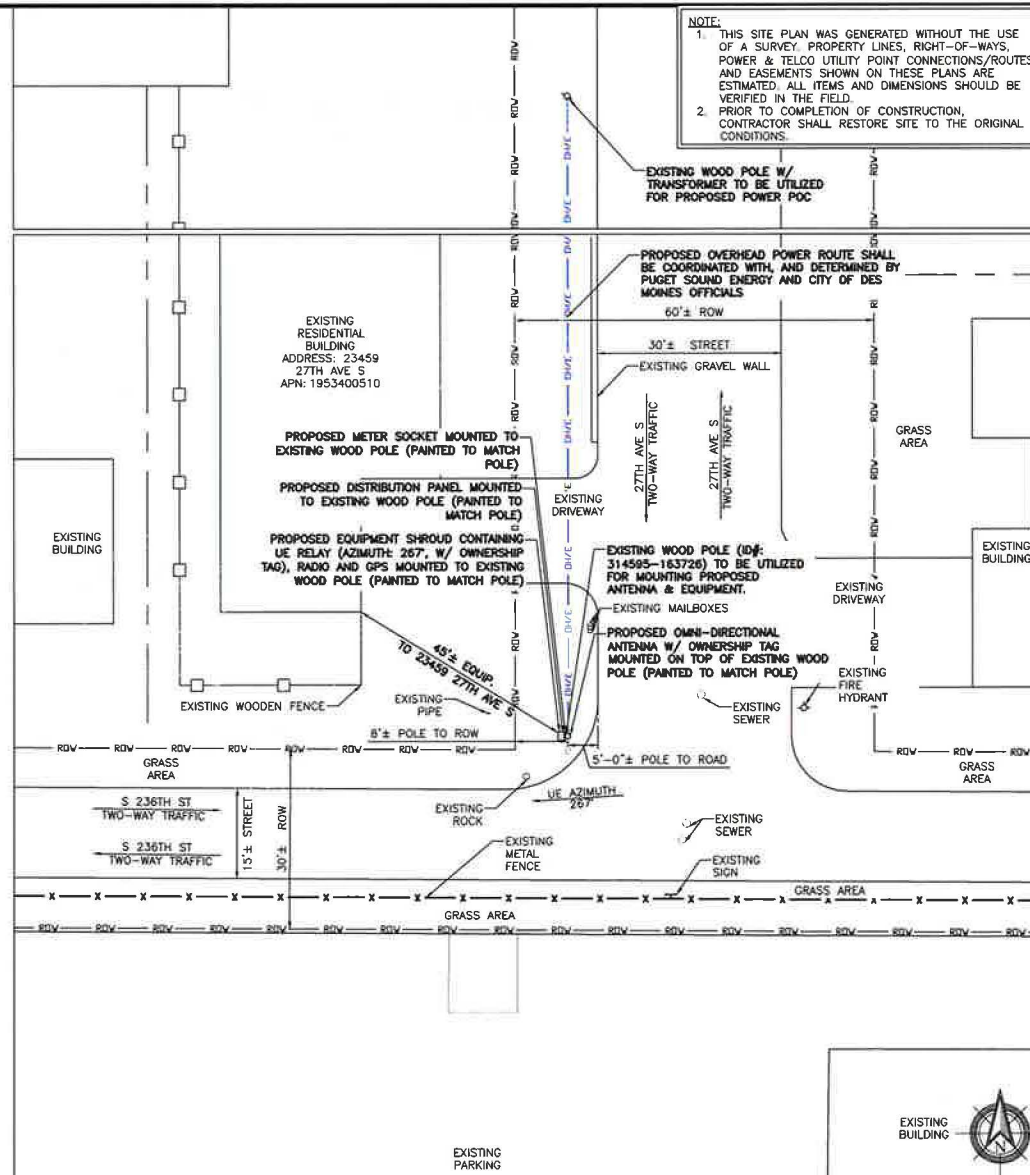
1



ENLARGED SITE PLAN

SCALE: 1" = 1'-0"

2



SITE PLAN

SCALE: 1:10

3



INITIAL REVIEW	
DESIGNER SIGNATURE	DATE
RF SIGNATURE	DATE
REAL ESTATE SIGNATURE	DATE



ASE OFFICE
7A VILVETRY WAY
WESTFORD, MA 01886
(978) 755-1882

THESE DRAWINGS ARE COPYRIGHTED AND ARE THE PROPERTY OF NEXIUS SOLUTIONS, INC. AND PRODUCED SOLELY FOR THE USE OF OUR CLIENT. ANY REPRODUCTION OR USE OF THE INFORMATION CONTAINED HEREIN WITHOUT WRITTEN CONSENT BY NEXIUS SOLUTIONS, INC. IS PROHIBITED.

EXTENET ID	DRAWN BY	CHECKED BY
51002	JK	MDC

KEY	DATE	DESCRIPTION
A	04/10/19	CD90 FOR REVIEW

IT IS A VIOLATION OF THE LAW FOR ANY PERSON, UNLESS THEY ARE ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER, TO ALTER THIS DOCUMENT.

EXTENET SYSTEMS (CA) LLC
2000 CROW CANYON PLACE
SUITE 210
SAN RAMON, CA 94583

SITE ADDRESS
ADJACENT TO (IN PROW)
23459 27TH AVE S
(S 236TH ST FRONTAGE)
DES MOINES, WA 98198

SHEET TITLE
OVERALL SITE PLAN

SHEET NUMBER
A-1



EXTERNAL REVIEW	
CONSTRUCTION STRUCTURE	DATE
RF SIGNATURE	DATE
REAL ESTATE SIGNATURE	DATE

NEXIUS
COMMUNICATIONS & NETWORK SOLUTIONS, INC.
10017 155th Ave S
Des Moines, WA 98198
(206) 255-1882

THESE DRAWINGS ARE COPYRIGHTED AND ARE THE PROPERTY OF NEXIUS SOLUTIONS, INC. AND PRODUCED SOLELY FOR THE USE OF OUR CLIENT. ANY REPRODUCTION OR USE OF THE INFORMATION CONTAINED WITHIN THIS DRAWING IS PROHIBITED WITHOUT WRITTEN CONSENT BY NEXIUS SOLUTIONS, INC.

EXTENDED	DRAWN BY	CHECKED BY
51002	JK	MDC

REV	DATE	DESCRIPTION
A	04/10/19	CD90 FOR REVIEW

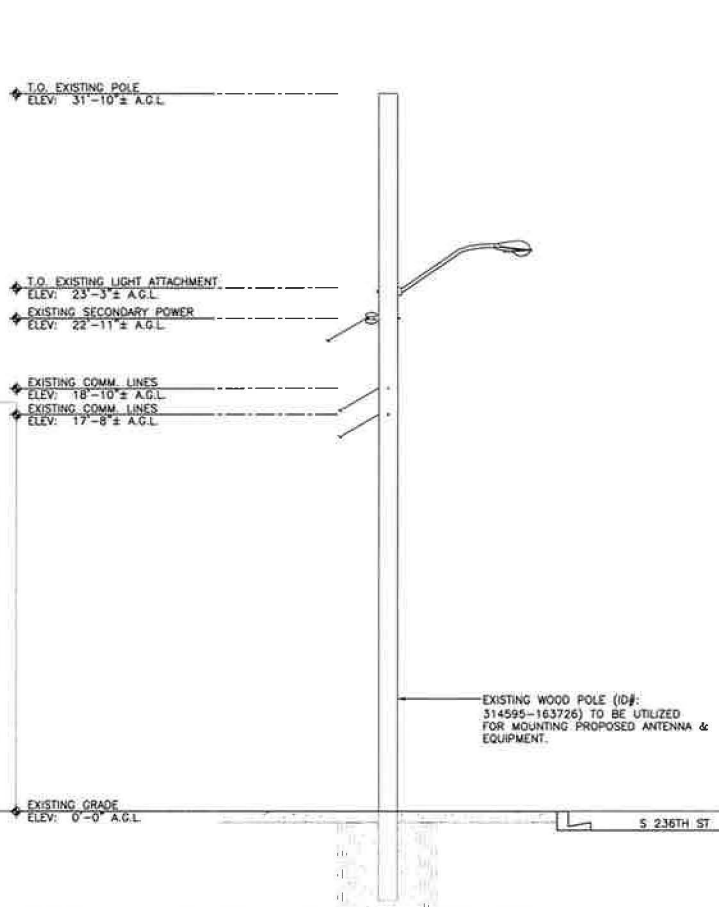
IF IT IS A VIOLATION OF THE LAW FOR ANY PERSON UNLESS THEY ARE ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER, TO ALTER THIS DOCUMENT

EXTENET SYSTEMS (CA) LLC
2000 CROWN CANYON PLACE
SUITE 210
SAN RAMON, CA 94583

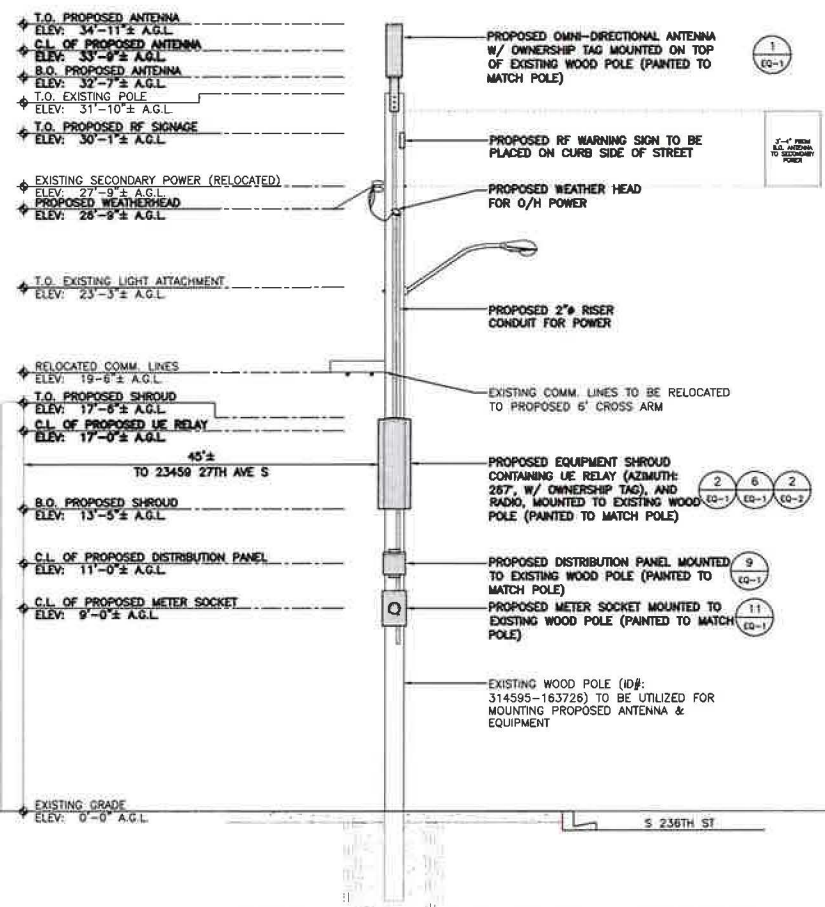
ADJACENT TO (IN PROW)
23459 27TH AVE S
(S 236TH ST FRONTAGE)
DES MOINES, WA 98198

POLE ELEVATIONS

SHEET NUMBER
A-2

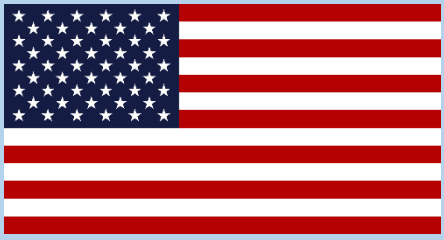


DETAIL A: EXISTING SIDE VIEW LOOKING EAST



DETAIL B: PROPOSED SIDE VIEW LOOKING EAST

POLE ELEVATIONS
SCALE: 3/8" = 1'-0"



4th of July, 2019

DES MOINES POLICE DEPARTMENT



Community Input Forum-June 20th, 2019

Purpose:

To meet with several community stakeholders before the 4th of July to formalize a collaborative fireworks plan, advertise our strategy and commit to doing the best we can.

Present:

Community Representatives

Police Advisory Representatives

Action Plan-Education Campaign

- Initiate Social Media Campaign:
 - Explaining fireworks are illegal in Des Moines, \$513 fine
 - FACEBOOK, TWITTER
- Work with apartment complex managers to get the word out
- Use Block Watch Captains to get the word out
- Advertise extra officers will be out on patrol
- Use reader boards on Marine View Drive explaining the law
- Use channel 21 to advertise
- Use of traditional media as a source (Channel 7)



Action Plan-Enforcement Campaign

“YOU LIGHT IT, WE WRITE IT”

- Similar to a “click-it-or-ticket” or “drive hammered get nailed” emphasis strategy
- Educate Police Department staff on enforcement emphasis
- July 1-July 7 operational period
- Extra officers staffed to respond to firework complaint calls and to proactively initiate contact with firework violators
- Designate 2 officers on July 4th to respond to firework calls, beyond regular staffing and in addition to Special Event Officers
- Seizure of fireworks when located

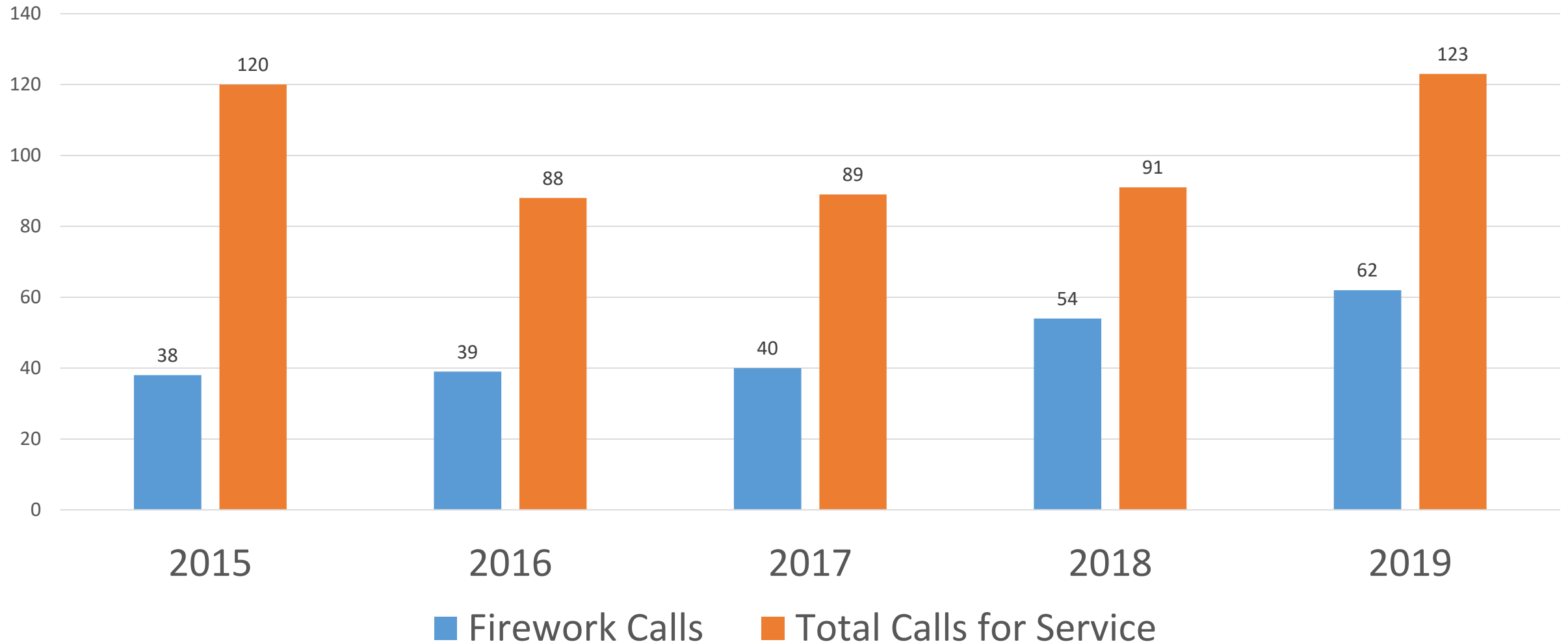


Seizures

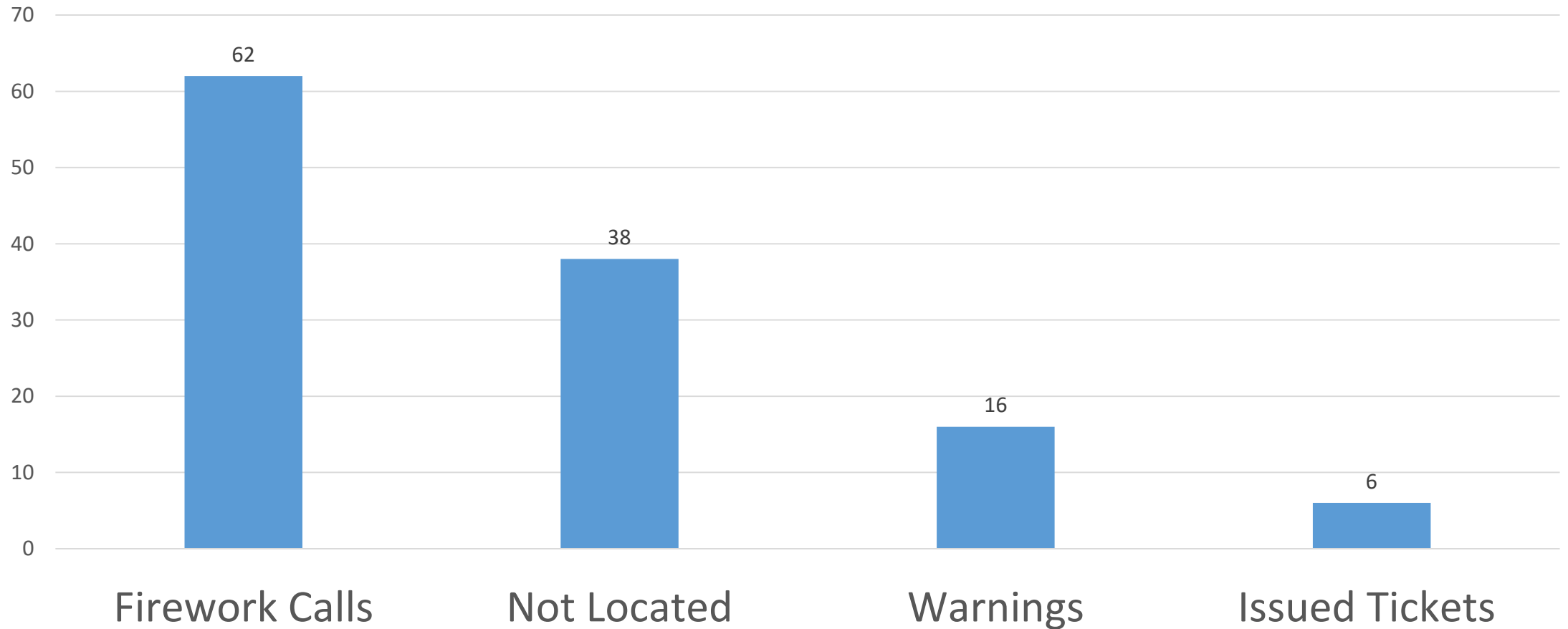




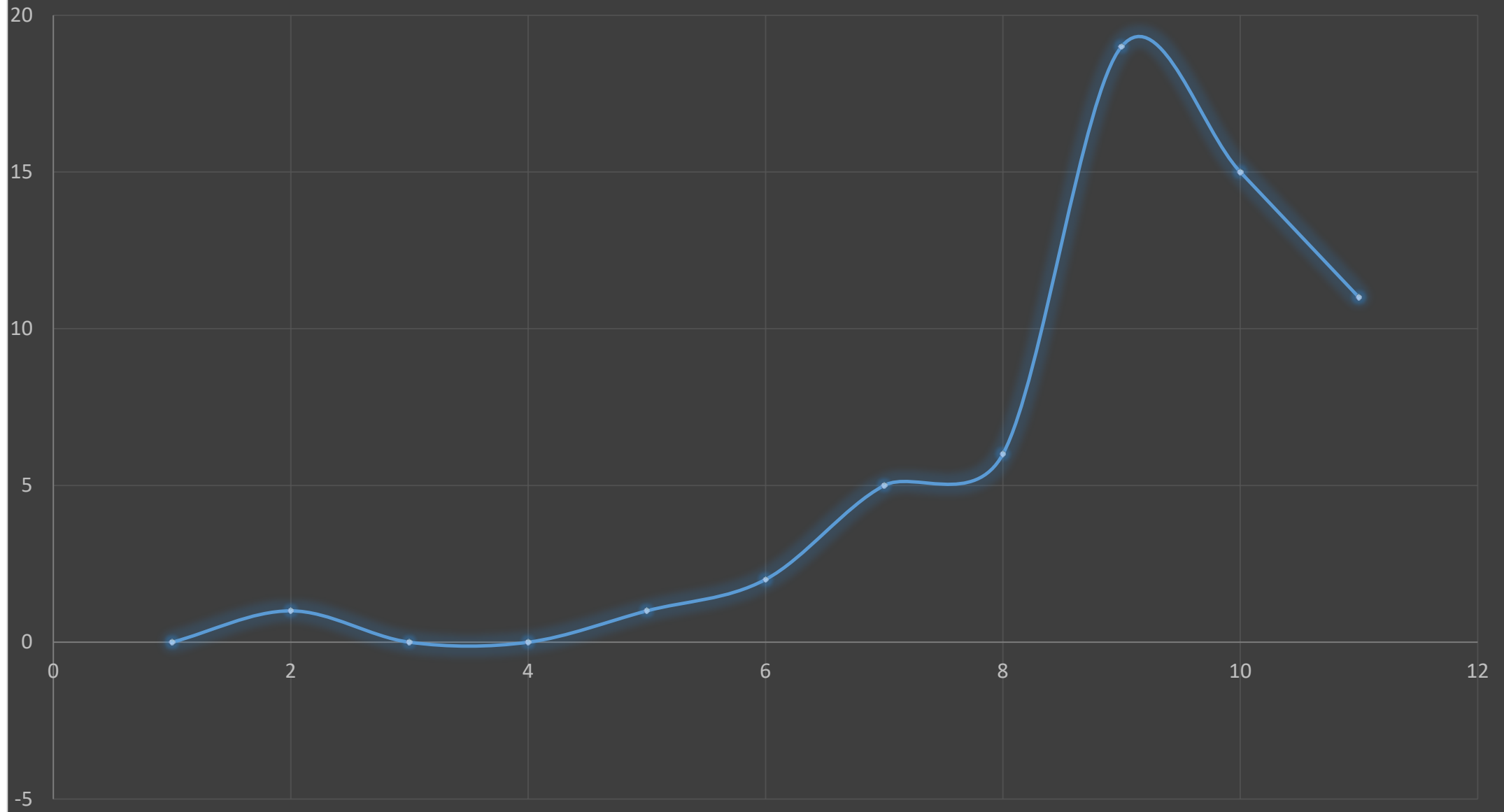
2015-2019 July 4th Calls



2019 Firework Calls



Fireworks calls for service by time



2020 Action Plan

- Community Input Forum
- Social and Traditional Media Campaign
- Enforcement Campaign
- Involvement of Community Action Groups
- Increase community involvement in Forum

Police@desmoineswa.gov

North Marina Parking Lot Bulkhead and Restroom Replacement



JULY 11TH, 2019
CITY OF DES MOINES

PROJECT BRIEFING

Andrew Merges, P.E., Executive MPA
Transportation & Engineering Services Manager

NORTH MARINA PARKING LOT BULKHEAD AND RESTROOM REPLACEMENT



- BACKGROUND

- Bulkhead for the North Lot Completed 1979

- ✦ Timber waler, timber piling, timber lagging, and deadman anchoring systems
 - Elements exhibiting degradation and failure
 - Some deadman anchors no longer constrained by timber walers
 - ✦ Rock slope protection



- Restrooms Completed 1980

- ✦ Brick walls, cast in-place roof, and limited appurtenances
 - Limited capacity
 - Ongoing repairs and limited access to utilities



NORTH MARINA PARKING LOT BULKHEAD AND RESTROOM REPLACEMENT



PROJECT STATUS

• PRELIMINARY ENGINEERING

- ✓ Structural engineering complete
- ✓ Geotechnical engineering complete
- ✓ Coastal engineering complete
- ✓ Plans, Specifications, and Engineers' Estimate
90% Complete - READY TO GO!



• PERMITTING – FEDERAL & STATE (Consolidated)

- ✓ SEPA – DNS Determination complete
- ✓ Building Permit – Pending 100% PS&E review
- ✓ WDFW – HPA issued for Phase I
- ✓ WDNR – Approval issued for work within the land lease area
- ✗ WDOE – Clean Water Act Section 401 Water quality certification pending NEPA approval
- ✗ NEPA – Army Corps of Engineers lead agency & issues Section 10 Nationwide Permit
 - ✓ USFWS – Endangered Species Act (ESA) Concurrence issued
 - ✗ **NMFS – Endangered Species Act (ESA) project review delayed until 2020**
 - ✗ DAHP – Section 106 National Historical Preservation Act concurrence pending

NORTH MARINA PARKING LOT BULKHEAD AND RESTROOM REPLACEMENT



PROJECT STATUS

- **PERMITTING DELAY – National Marine Fisheries Service (NMFS)**
 - Project requires formal consultation, historically not applicable to this type of project
 - Project review delayed at least until early 2020 due to federal furloughs, backlog, and staffing
 - Project may be pushed into a pending programmatic review which stipulates general project mitigation requirements above those in a formal consultation process

- **PERMITTING ACTIONS TAKEN**
 - Continued coordination with NMFS to try and accelerate their project review timeline
 - Coordination with various state and federal agencies to determine if any options exist to expedite NMFS review

- **PROJECT ACTIONS TAKEN**
 - Placed the design project on hold to preserve remaining budget until an advertisement date can be accurately determined based on NMFS schedule

NORTH MARINA PARKING LOT BULKHEAD AND RESTROOM REPLACEMENT



QUESTIONS?



[illegible]

South King County Fund

Commissioner Fred Felleman

July 11, 2019

Andy Gregory

Port of Seattle



Objectives

- Introduce the Fund's origin.
- Define the principles.
- Provide context for spending within the Port's statutory authority.
- Present the outreach plan.
- Allow some time for Q&A.

Origin of the South King County Fund

In November of 2018, Port Commission passed a motion creating the SKCF as follows:

“There shall be an Airport Community Fund, which will designate \$750,000 in 2019 to be used to provide airport communities resources and support, as allowed under law. Additional funding shall be designated for the Airport Community Fund over five years not to exceed a gross allocation of \$10 million between 2019 and 2023, inclusive.”

Commission-Adopted Principles (1 of 2)

- **The SKCF will be used to fund projects in the South King County area:** Defined as near-airport communities, with other locations considered on a case-by-case basis, depending on the merits and type of program or project.
- **The SKCF will prioritize community input to inform Port decision making:** Recognizes the importance of community participation and the Port governance role.
- **The SCKF will support Port equity policies and practices:** Gives underrepresented communities access to opportunities, and uses equity policies to evaluate potential initiatives and establish desired outcomes.
- **The SKCF will provide added benefit:** Adds to current Port programs to address airport noise, increased environmental health, and sustainability.

Commission-Adopted Principles (2 of 2)

- **The SKCF will prioritize projects that are ready to proceed:** Prioritizes measures that we can implement now or within a short time frame.
- **The SCKF will build on established programs and commitments to fulfill current obligations:** Sets priorities based on established programs and thresholds.
- **The SKCF will promote innovation:** Provides the opportunity to explore innovative techniques that could lead to major longer-term benefits.
- **The SKCF will encourage matching funds where possible:** In-kind or other funds to stretch dollars and impact.

Port Statutory Authority

- The Port of Seattle is a “Limited Purpose” government as defined by the legislature.
- There are statutory limits on the Port’s use of funds.
- The Port is developing project selection criteria based on these limits.

Engagement Strategy:

1. Formative engagement (Summer 2019)

1. Local elected officials
2. “Grass top” community leaders
3. Established stakeholder groups

2. Fund promotion, management and distribution (Fall 2019 and beyond)

1. Community Advisory Panel for deep equity engagement
2. Community open houses
3. Stakeholder Groups and Elected Officials
4. Broad fund marketing and advertising

Timeframe	Activity/Milestone
May 22	Highline Forum briefing
June 25	Commission adoption of Principles
June 26	StART briefing
July 31	Highline Forum briefing
July – August	Airport City Council Briefings
July – August	Stakeholder interviews / outreach to “grass-top” community leaders
August 28	StART input session
August–September	Multi-cultural/equity-based groups luncheon (or breakfast) to share principles and equity-based engagement plan
September-October	Community Equity Advisory Panel recruitment meetings
September – October	South King County Community Open Houses
November – December	Pilot Project(s) begin
January – March 2020	Community Equity Advisory Panel Engagement
April 2020	South King County Fund Launch
April 2020 – 2023	SKCF promotion and continued equity engagement

 = Formative Engagement

 = Promotional Engagement

What We're Asking from You:

- Given the principles outlined in this presentation, and recognizing the statutory constraints on the Port's spending authority, we want to hear your ideas.
- Several opportunities to provide input:
 - Highline Forum (7/31/19)
 - StART Meeting (8/28/19)
 - Please email us at SKCFund@portseattle.org, or contact Andy Gregory, Environmental Engagement Program Manager Gregory.A@portseattle.org

Summary

- Fund includes \$10 M over 5 years to be distributed in accordance with the principles.
- Selection criteria will be based within the scope of the Port's statutory spending authority.
- Engagement will be thorough and include both formative and promotional outreach
- Please share project ideas with your Mayor and City Manager.

Questions?

Thank you for your time,
For more info, please email us at:

SKCFund@portseattle.org



MOTION 2019-10:
A MOTION OF THE PORT OF SEATTLE COMMISSION

adopting principles to guide outreach and development of
the South King County Fund policy.

AMENDED AND ADOPTED
JUNE 25, 2019

INTRODUCTION

The Aviation Committee recommends the following principles to the Port of Seattle Commission for consideration. In general, principles are a value statement by the Commission. Principles provide guidance for considering tradeoffs that may arise when considering a specific course of action or project but are not intended to create specific project selection criteria.

Principles also guide the Commission and staff when they engage with stakeholders and help inform the development of Commission policy. The South King County Fund (SKCF) principles will be used to engage with stakeholders in 2019 on potential project areas and to explore how Port staff should structure the program.

Motion 2018-14 on November 27, 2018, created the SKCF, stating as follows:

Section 3. There shall be an Airport Community Fund, which will designate \$750,000 in 2019 to be used to provide airport communities resources and support, as allowed under law. Additional funding shall be designated for the Airport Community Fund over five years not to exceed a gross allocation of \$10 million between 2019 and 2023, inclusive.

Specific uses, guidelines, and timelines for the fund will be established by commission policy directive in 2019. For purposes of illustration, fund uses may include support for addressing airport noise and for other projects that support increased environmental health and sustainability.

TEXT OF THE MOTION

The Port of Seattle Commission hereby adopts the following principles for the South King County Fund:

South King County Fund Principles

1. **The SKCF will be used to fund projects in the South King County area:** Defined as near-airport communities, with other locations considered on a case-by-case basis, depending on the merits and type of program or project.
2. **The SKCF will prioritize community input to inform Port decision making:** Recognizes the importance of community participation and the Port governance role.
3. **The SKCF will support Port equity policies and practices:** Gives underrepresented communities access to opportunities, and uses equity policies to evaluate potential initiatives and establish desired outcomes.
4. **The SKCF will provide added benefit:** Adds to current Port programs to address airport noise, increased environmental health, and sustainability.
5. **The SKCF will prioritize projects that are ready to proceed:** Prioritizes measures that we can implement now or within a short time frame.
6. **The SKCF will build on established programs and commitments to fulfill current obligations:** Sets priorities based on established programs and thresholds.
7. **The SKCF will promote innovation:** Provides the opportunity to explore innovative techniques that could lead to major longer-term benefits.
8. **The SKCF will encourage matching funds where possible:** In-kind or other funds to stretch dollars and impact.

STATEMENT IN SUPPORT OF THE MOTION

In support of the South King County Fund (SKCF) development, External Relations established an engagement strategy to ensure robust, multi-cultural stakeholder involvement that will support equitable implementation of the fund. The strategy involves near-term outreach to local government, grass-top multi-cultural leaders, and existing stakeholder groups such as the Sea-Tac Airport Stakeholder Advisory Roundtable (StART). It also involves the development of a long-term equitable engagement mechanism led by a consultant and modeled off the successful Duwamish EJ work. In total this approach will yield broad and equitable inclusion and community accountability in the development and distribution of the SKCF:

1. Build awareness and interest in the fund by engaging stakeholders in **early discussions/interviews** about potential uses and outreach opportunities.
2. Generate involvement and support for the fund by **incorporating feedback** from early discussions **into public input opportunities**.

3. Engage a wide audience of South King County citizens through **advertising, social media, partner promotions, posters, direct mail.**
4. Establish a mechanism for **equitable engagement** with historically underrepresented near-airport communities.
5. Build **community capacity** for engagement with the Port through leadership development.
6. Be responsive and supportive of community interests using **listening/community priority setting sessions** in several South King County cities.
7. Maintain communications with engaged stakeholders through **regular communications.**

The plan is to support the broad outreach that will ensure deep community engagement, leadership development, capacity-building, and data collection and support the fair and equitable distribution of the South King County Fund to near-airport communities. This approach builds upon the successful Duwamish Valley EJ Pilot and promotes equitable economic development, environmental health and community capacity building in near-airport communities. Additionally, it is a way to identify and meet emerging community needs.

Investing in this capacity-building now will elevate the voices of community members with a vested interest in working proactively with the Port for this and future projects. One key stakeholder group will be employees of businesses working at Sea-Tac Airport, many of whom reside in near-airport communities.

The Commission intends to review a South King County Fund Policy Directive to guide the development of the SKCF program and a motion to instruct the implementation of pilot projects. As part of the policy direction, the Commission intends to retain review and approval authority for proposed projects and to retain the authority to approve funding of projects recommended by Port staff, as well as projects recommended through community input.

Key dates will include: July – August Airport area City Council briefings; August – October equity-based luncheon and stakeholder engagement; September – October community open houses; September Commission briefing and policy directive; January – March 2020 Community Equity Advisory Council engagement; and April 2020 South King County Fund official launch.

Equipment Purchase



July 11, 2019

R. Brandon Carver, Public Works Director

Suggested Motions:

- MOTION 1:

“I move to approve the purchase of utility vehicles and equipment identified in Attachments 1 through 4 for a total amount of approximately \$167,000 and authorize the City Manager or designee to sign subsequent purchase orders.”

- MOTION 2:

“I move to direct staff to forward a budget amendment for the purchase of this equipment.”

Excavator and Trailer:

- Current backhoe limited to 200 degree turn rotation.
- Larger footprint for traffic control due to outriggers and maneuvering.
- Excavator can rotate 360 degrees.
- Excavator can straddle a trench, creating smaller work zone, smaller traffic impacts.
- Often have need for excavator about 5 -6 times a year (\$1,200/each rental).
- Anticipate an increase of in-house pipe replacement projects.
- \$63k – excavator
- \$11k – trailer (trade in existing trailer for \$7k-\$9k)



Marina and Parks Utility vehicle:

Snow/Ice Response Operations

- Currently crews use 1-ton pick-up style for intersections and parking lots during snow/ice events.
- Utility vehicles would be more efficient for local road cul-de-sacs, City parking lots including Marina floor, City trails and walkways.

Normal Routine Operations

- **Marina** currently uses a golf cart.
- Utility vehicle would improve hauling needs in Marina and trail, tow small boats, transporting guests in closed heated cab.
- **Parks** vehicle will assist newly formed landscape crew hauling tools/equipment.
- Could be used for more efficient irrigation repairs.
- \$31k each



Streets Poly Sanders:

- Current sander is metal and has maintenance issues due to corrosion.
- Poly sanders made of heavy duty plastic, won't corrode.
- Currently two smaller trucks with plows do not have sanders. Every truck would now have a sander. (4 large, 3 small)
- \$14k for two



Streets Spreader Stands:

- Currently a 3-man operation using loader to left and set in trucks.
- Increase safety and efficiency by being able to back truck under stand to load or unload.
- \$16.5k for four stands



Suggested Motions:

- MOTION 1:

“I move to approve the purchase of utility vehicles and equipment identified in Attachments 1 through 4 for a total amount of approximately \$167,000 and authorize the City Manager or designee to sign subsequent purchase orders.”

- MOTION 2:

“I move to direct staff to forward a budget amendment for the purchase of this equipment.”

Mary Gay, Sonju, and Van Gasken Park Enhancements:

Removal of non-park related structures



July 11, 2019

R. Brandon Carver

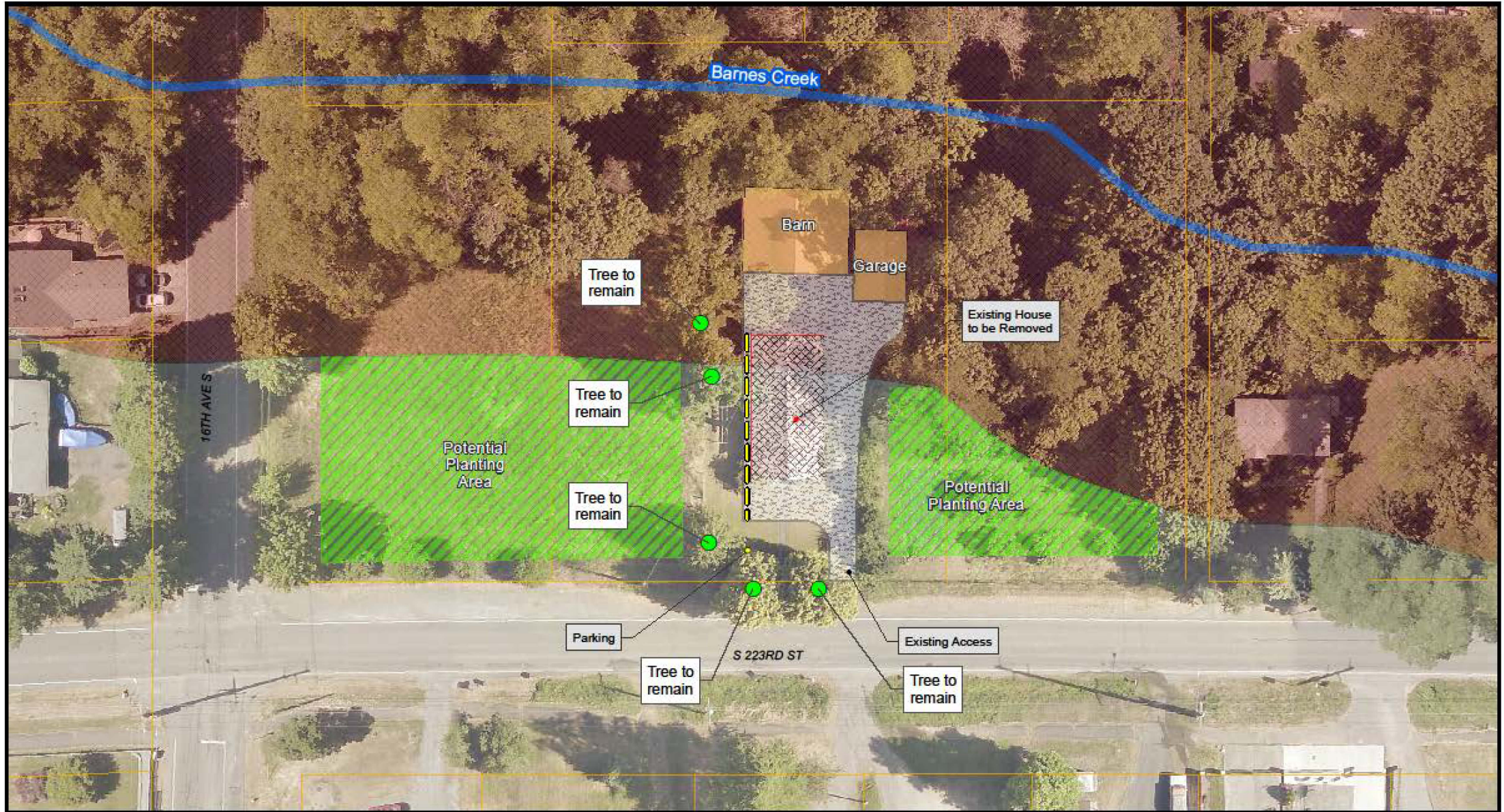
Public Works Director

Mary Gay Park

- Located at 1616 South 223rd Street
- Donated to City in early 2018.
- House built 1919, barn, detached garage 1990.
- Staff reviewed house, deferred maintenance, \$30k - \$80k (septic). Detached garage in good shape, concerns with barn.
- Established an original capital budget of \$100k for 2019.
- CIP funding concerns related to other priorities (216th Seg. 3).
- Future of the park – Highline College ILA for Urban Agriculture approval June 27th.
- On-site parking minimal.



Mary Gay Park Enhancement Plan

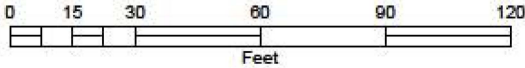


Sonju Park

- Located at 24728 16th Ave South
- Donated to City in 1997.
- Main house built 1941, 480 sf. cottage, and barn.
- House rented for \$1,000/mo. Much deferred maintenance (roof, interior flooring and walls), Approx. \$50k.
- Current tenant leaving this month.
- Portions of non-critical area of property been used as community garden since 2011.
- Future of the park – City looking at other potential areas on property to expand community garden.
- On-site parking minimal.
- Timing appropriate to look at changes to disposition of the houses.



Sonju Park Enhancement Plan

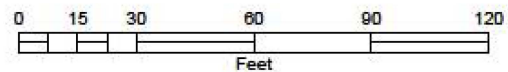


Van Gasken Park

- Located at 402 South 222nd Street
- Purchased by City in late 2017.
- House built in 1900, detached garage built around 1960.
- Currently working on a landscape plan within constraints of site sensitivity.
- Detached garage not envisioned in future plans.
- Potential for patio or gathering area.
- Economy of scale with other potential demolition work.



Van Gasken Park Enhancement Plan



Summary

- Provides on-site parking where none exists in advance of planned increase use at Mary Gay and Sonju Parks.
- Removes structures that are not consistent with future plans for these parks.
- The return on investment needed for the deferred maintenance will likely take many years to be realized for property rentals.
- Does the City want to continue to expand our role as residential property managers/landlords?
- Concurrence with Municipal Facilities Committee on March 28th and June 27th 2019 for Mary Gay and Sonju properties.
- Estimated removal and site prep for parking costs:
 - Mary Gay Park house - \$53,700
 - Sonju Park house and cottage - \$54,100
 - Van Gasken garage - \$25,000

Suggested Motions:

- MOTION 1:

“I move to direct administration to demolish the existing residential structure at Mary Gay Park (formerly Bundy property), in order to provide on-site parking and other amenities for the park.”

- MOTION 2:

“I move to direct administration to demolish the existing residential structures at Sonju Park, in order to provide on-site parking and other amenities for the park.”

- MOTION 3:

“I move to direct administration to demolish the existing garage structure at Van Gasken Park.”

- MOTION 4:

“I move to direct staff to make a budget amendment reflecting the park related enhancements.”

Des Moines Memorial Drive and South 200th Intersection Improvement Project

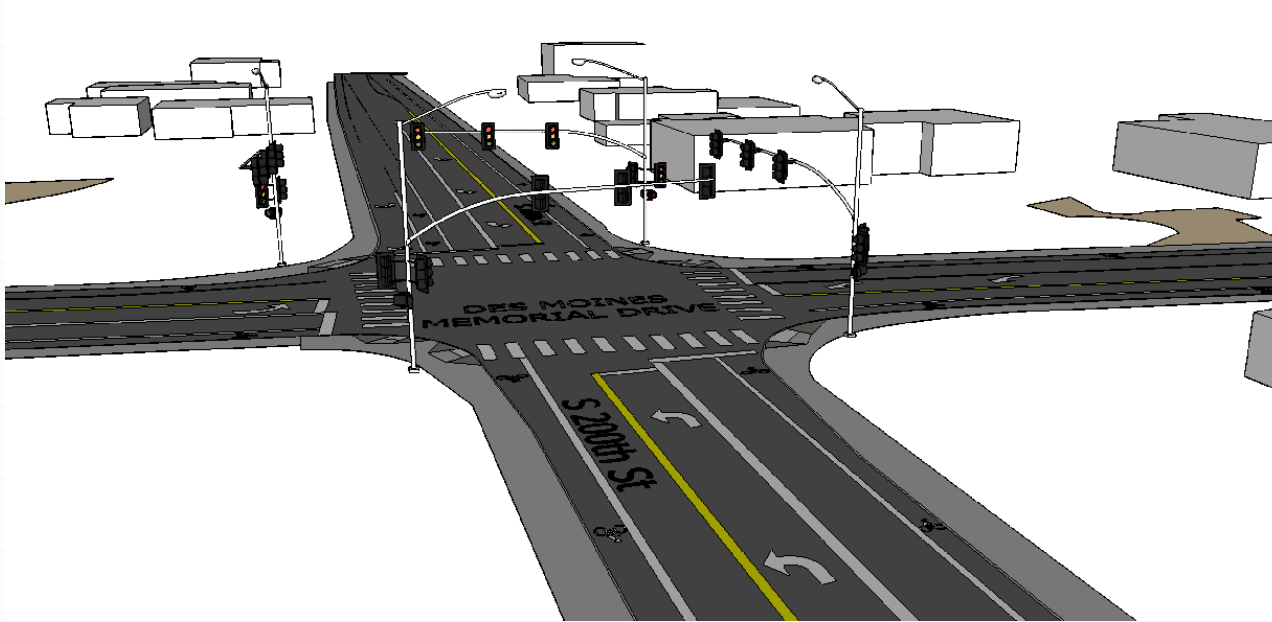
Authorization for Condemnation

Des Moines City Council
July 11, 2019

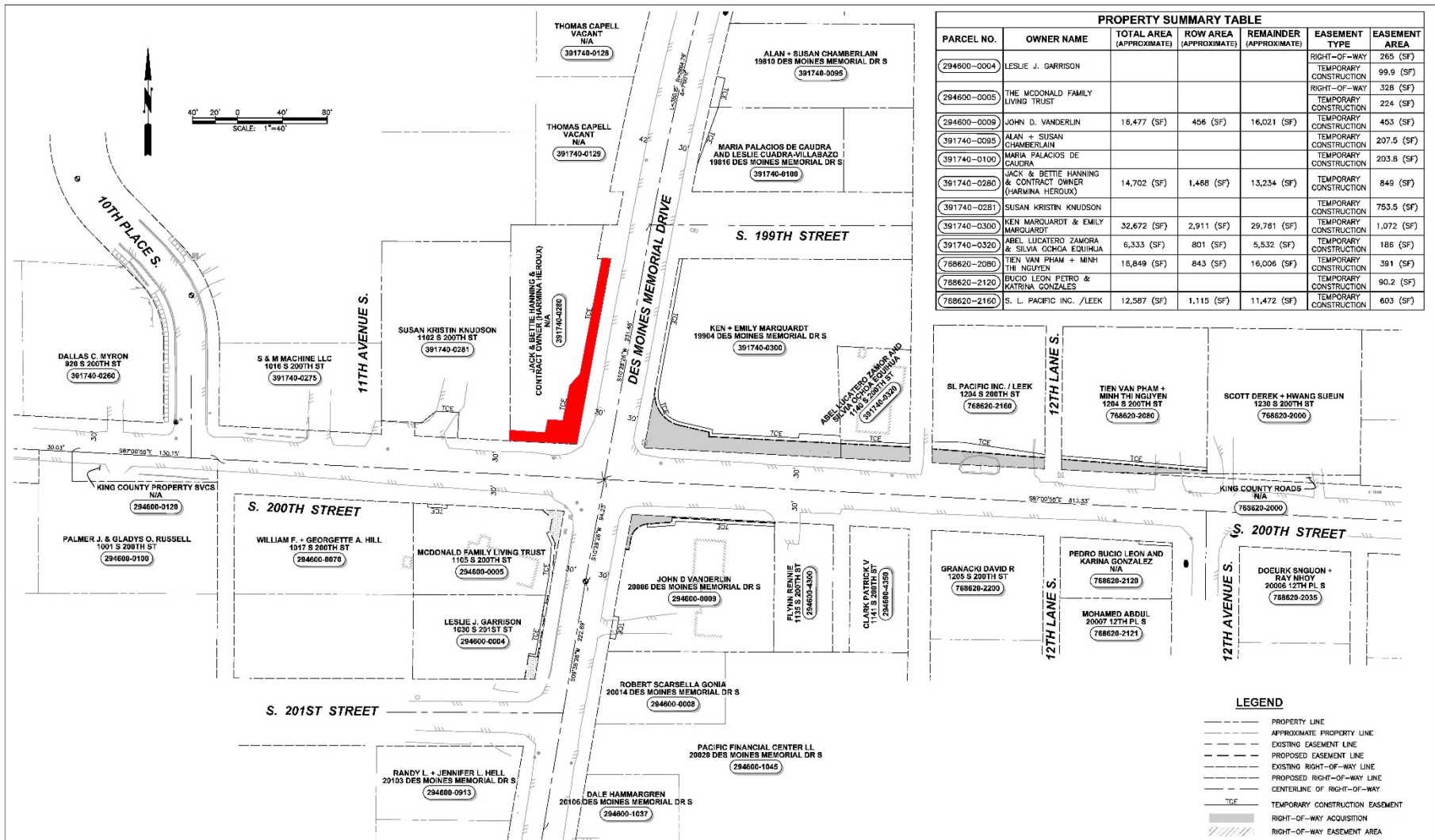
Presented by
R. Brandon Carver, P.E., P.T.O.E.
Public Works Director

Project Status

- City of SeaTac project lead
- Interlocal Agreement – SeaTac & Des Moines Complete
- Plans, Specifications, and Engineers' Estimate 100% Compete
- Right-of-Way acquisition underway
- Project solicitation for bids 3rd-4th quarter 2019



M:\Seatac\18465 Des Moines Memorial Dr and S 200th St Intersection\01 Design\VP\INSET\General\010.dwg, 6/7/2019 1:08 PM, BRUCE SKELDON



NO.	DATE	BY	APPR.	REVISION

Gray & Osborne, Inc.
CONSULTING ENGINEERS
1130 BANNER AVENUE SOUTH, SUITE 300
SEATTLE, WASHINGTON 98144 • (206) 284-0860
DRN. DSGN. CBW CHKD. T.LS

Public Works Department
William Appleton, P.E., Public Works Director
Florento Cabudol, P.E., City Engineer
4800 South 188th Street, SeaTac, WA 98198-8505
Telephone: (206) 973-4720, Engineering Division

SEA-TAC
STAFFORD
SEA-TAC
SEA-TAC

CITY OF SEATAC
DES MOINES MEMORIAL DRIVE AND SOUTH 200TH STREET
INTERSECTION IMPROVEMENT PROJECT
RIGHT OF WAY AND EASEMENT PLAN
DATE: JUNE 20'9 SCALE: AS NOTED JOB # ST-065
PLAN NO: G3
3 OF 108

Recommendation

- Motion 1:

“I move to suspend Council Rule 26(a) in order to enact Draft Ordinance 19-024 on first reading.”

- Motion 2:

“I move to amend Draft Ordinance 19-024 to remove references to Exhibit A-1.”

- Motion 3:

“I move to enact Draft Ordinance No 19-024 as amended, directing the City Attorney to prosecute the eminent domain action in King County Superior Court in a manner provided by law to condemn, take, damage and appropriate real property in a manner necessary to carry out the provisions of this Ordinance.”

DRAFT ORDINANCE NO. 18-107
SMALL CELL FRANCHISE
AGREEMENT: EXTENET, INC

July 11, 2019

Staff Presentation: Tim George, City Attorney

Process and requirements

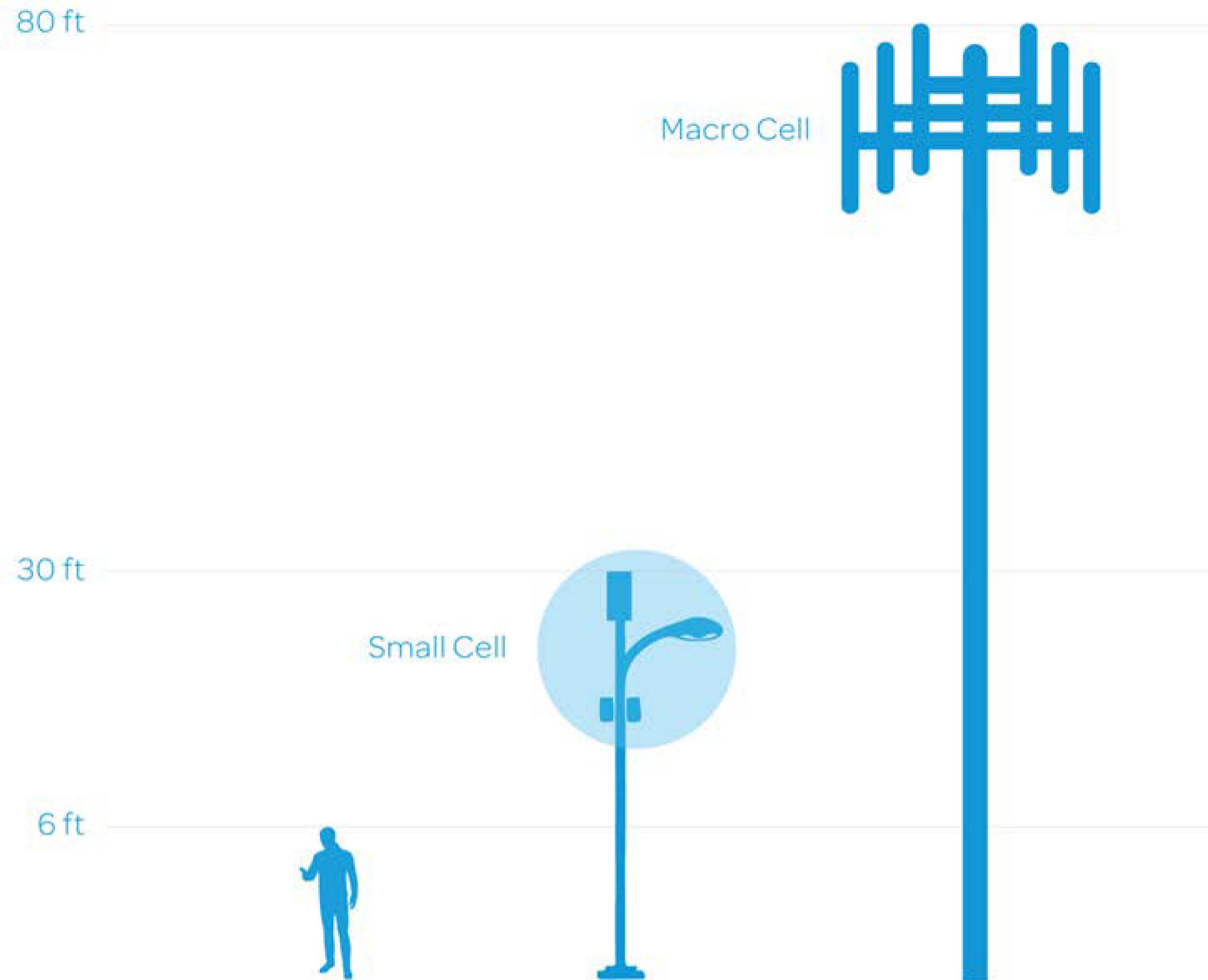
- Two readings - pursuant to state law.
- City Council recently updated Title 20 DMMC to create regulations specific to Small Cell Facilities. Creates framework for this Franchise. The City's telecommunications code contains the maximum level of regulation available to the City.
- City is limited by Federal Law as to what areas are subject to regulation.
- City cannot prevent provider from closing significant gaps in coverage but can address aesthetics by requiring the “least intrusive means.”
- Competitive Equity/Neutrality – Federal Law requires that cities treat service providers equally. Template for franchise created by City's Telecommunications Consultant.

Small Cell Telecommunications Franchise

The need for increased capacity is driven by the demands of our residents.

This is generally in dense high population areas that cannot be adequately served by a cell tower.

Different technology, different process



Key Terms

- Franchise terms meet all requirements of Title 20 DMMC.
- 10 year franchise agreement.
- Relocation costs: Extenet responsible for relocation costs unless state law says otherwise.
- Right of way management: Extenet subject to all City permitting requirements and fees.
- Insurance: \$5 million plus. Exceeds any anticipated potential claim.
- Vacation and abandonment: Follows City's preferred procedure. Discontinued facilities must be removed within 60 days.

Costs, Fees, and Taxes

- Application Fee: limited by state law to actual administrative expenses incurred during preparation of franchise agreement. One time \$20,000 fee. Covered staff cost of negotiating franchise.
- Additional Costs: Extenet will pay actual City costs for future staff time spent administering this agreement.
- Permitting Costs: Extenet will pay all permitting costs associated with work performed under the franchise.
- Utility Tax: Extenet subject to utility tax of 6% on telephone business.
 - *Extenet is existing utility and currently pays 6%.*
 - *To the extent this improves service, may see additional customers.*

■ Safety :

- Congress has preempted state and local regulation of radio frequency emissions and interference.
- The City's telecommunications code contains the maximum level of regulation available to the City.
- Franchise Agreement mirrors our code and requires that Extenet certify compliance with federal regulation.
- In the view of the FCC, the emissions from small cell facilities are well below acceptable limits for Maximum Permissible Exposure (MPE).
- Public safety issue if cell phones don't work in crowded spaces because of capacity limitations.

- Cities cannot prohibit small cell facilities.
- Des Moines has enacted the maximum regulations allowed under federal law in order to limit impacts of small cell facilities while at the same time allowing our residents access to quality telecommunications services.
- Motion:
“I move to pass Draft Ordinance No 18-107 to a second reading on the next available City Council agenda.”

Zoning Regulations – Revisions Continued Public Hearing

SUSAN CEZAR

CHIEF STRATEGIC OFFICER

JULY 11, 2019

A solid orange horizontal bar spanning the width of the slide at the bottom.

Background

City adopted regulations for identifying and siting Essential Public Facilities (EPF) in 2018 -Chapter 18.255 DMMC

A recent new type of EPF called an Enhanced Services Facilities (ESF) is provided for under state licensing provisions

Appropriate to provide additional clarity for this use and where it is allowed

March 14, 2019 City Council adopted Ordinance 1714 - interim zoning controls – staff presentation

May 9, 2019 – First reading and public hearing, continued – staff presentation

June 27, 2019 – Public hearing continued until July 11, 2019

Tonight

Third Reading, complete the public hearing

City Council will consider:

Whether to make the interim regulations permanent (Draft Ordinance 19-048), with or without revisions

Or, let the interim regulations lapse

Regulation Revisions

- Adds a definition for Enhanced Services Facility
- Clarifies that ESFs are Essential Public Facilities
- Clarifies where Enhanced Services Facilities are allowed (PR-C)
- Defines the appropriate permit process (UUP/EPF regulations)
- Additional provisions:
 - Revises definition of nursing homes (clarity)
 - Revises allowed zones for:
 - Essential Public Facilities not specifically listed in the use chart
 - Mental Hospitals
 - Eliminates duplicate definition for mental hospitals

Comments

Public comments received:

- Code interpretation request
- A number of comments in support of the proposed ordinance

One agency commented:

- Washington State Department of Social and Health Services (DSHS)

Concern that ordinance might effectively prevent ESFs in the City

Staff met with DSHS on June 3, 2019 and toured the PR-C zone

DSHS indicated they no longer have concerns with the proposed ordinance

Follow-up letter from DSHS thanking the city for the meeting, encouraging the city to expand allowed zones in the future

Suggested Motion

“I move to enact Draft Ordinance No. 19-048 amending the use table in DMMC 18.52.010B and adding and revising definitions in DMMC 18.01.050 to make the interim zoning controls enacted by Ordinance 1714 permanent.”

[illegible]



SHORELINE MASTER PROGRAM

PERIODIC REVIEW AND AMENDMENT

Jason Woycke, AICP - Planner II
City of Des Moines

Misty Blair - Senior Shoreline Planner
WA Department of Ecology

HOW DID WE GET HERE?

- State of Washington requires cities to review and amend their SMPs every 8 years.
- The City was required to implement a rigorous Public Participation Plan.
- Amendments were drafted and the public was given opportunity to comment.
- City Council conducted a joint public hearing with Ecology on April 11, 2019.
- The draft ordinance to adopt the amended SMP was moved to a second reading.
- The proposed amended SMP was sent to Ecology for review and comments.
- Ecology provided a Determination of Initial Concurrence that included required revisions to proposed SMP critical areas provisions to meet state law requirements.
- Staff incorporated changes into the SMP amendments in response to comments.
- City Council may now adopt the amendments to the SMP.

PUBLIC PARTICIPATION



Public Participation Opportunities and Outreach

- City webpage: <http://www.desmoineswa.gov/smp>
- Initial open house held on August 14th, 2018
- Farmer's Market booth on August 25th, 2018
- Open house held on November 13, 2018
- Council Committee briefings
- Council Regular Meeting on July 26, 2018
- City Currents newsletter
- The Waterland Blog
- Westside Weekly newspaper
- Updates on the City of Des Moines Facebook page
- Public hearing on April 11, 2019
- 30-day comment period ended on April 18

TIMELINE



Adoption by Des Moines City Council



Staff submits adopted SMP to Ecology



Ecology has 30 days to formally approve



SMP effective after 14 days of approval

SUGGESTED MOTION

“I move to enact Draft Ordinance No. 19-010 amending the City’s Shoreline Master Program and DMMC 16.20.010.”