

City of Tacoma
Office of the Director
Report and Decision

**CRITICAL AREA
DEVELOPMENT PERMIT
APPLICATION FOR:**

FILE NO: LU22-0140

Port of Tacoma
C/O Mark Rettmann
P.O. Box 1837
Tacoma, WA 98421

SUMMARY OF REQUEST:

A Critical Area Development Permit to develop approximately 24.49 acres of off-dock property to use as a shipping container storage and maintenance facility. The Port of Tacoma (Port) proposes to fill two wetlands consisting of approximately 4.42 acres and remove a .9 acre biodiversity area for this development.

The Port proposes to use the innovative mitigation options under the Critical Areas Preservation Ordinance, Tacoma Municipal Code (TMC) Chapter 13.11 and its Lower Wapato Creek Advance Mitigation Site (Lower Wapato Creek AMS) to mitigate for impacts to the wetland and biodiversity area.

LOCATION:

1702 Port of Tacoma Road, Parcel Numbers: 6965000350, 6965000380, 6965000390, and 696500400

SUMMARY OF DECISION:

The request for a Critical Area Development Permit is **Approved**, subject to conditions.

Notes:

The appeal period on this decision closes **May 2, 2023** and the effective date of this decision is the following business day, provided no requests for reconsideration or appeals are timely filed as identified in APPEAL PROCEDURES of this report and decision.

The Director has jurisdiction in this matter per TMC 13.05.080.A.6. The applicant bears the burden of proof to demonstrate the proposal is consistent with the provisions of the TMC, the applicable provisions and policies of the City's Comprehensive Plan, and other applicable ordinances of the City.

**FOR ADDITIONAL INFORMATION CONCERNING THIS LAND USE PERMIT PLEASE
CONTACT:**

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SUMMARY OF RECORD

The following attachments and exhibits constitute the administrative record:

Attachments:

- Attachment A: Site Plan
- Attachment B: Technical Memorandum, provided by Karla Kluge, Senior Environmental Specialist, dated April 10, 2023

Exhibits¹:

- Exhibit A: Revised Joint Aquatic Resources Permit Application (JARPA)
- Exhibit B: SEPA Environmental Checklist, prepared May 25, 2018 and Port of Tacoma Determination of Non-Significance (DNS) dated June 18, 2018
- Exhibit C: Wetland Analysis Report, dated October 2021, Grette Associates
- Exhibit D: Off-Dock Container Support Facility Project Critical Areas Preservation Ordinance Analysis, July 2022, Grette Associates
- Exhibit E: Lower Wapato Creek AMS Use Plan for Port of Tacoma's Off-Dock Container Support Facility, June 16, 2022
- Exhibit F: Final Advance Mitigation Plan Lower Wapato Creek Habitat Project, June 1, 2020, Revised March 2021, Port of Tacoma
- Exhibit G: Alternatives Site Analysis
- Exhibit H: Biodiversity Areas and Corridor Review Comments Technical Memorandum, February 22, 2023
- Exhibit I: Grette Biodiversity Supporting Data, March 27, 2023
- Exhibit J: Technical Memorandum Biodiversity Area and Mitigation, April 7, 2023, prepared by Grette Associates
- Exhibit K: WA Department of Ecology Section 401 Water Quality Certification Letter, October 7, 2022
- Exhibit L: Transportation Technical Report, September 20, 2022, Heffron Transportation Inc.
- Exhibit M: Cultural Resources Overview for the Port of Tacoma General Central Peninsula Environmental Assessment, May 9, 2018, SWCA Environmental Consultants
- Exhibit N: Cultural Resources Assessment for the Port of Tacoma Off-Dock Container Support Facility, June 21, 2022, Willamette CRA
- Exhibit O: Inadvertent Discovery Plan, June 22, 2022, Port of Tacoma
- Exhibit P: Summary of Public Comments, Applicant's Response and Public Meeting Documents
- Exhibit Q: City Staff Comment Memos: Traffic Comment Memo, dated April 4, 2023 and Consolidated Staff Comment Memo, dated February 24, 2023

The Director of Planning and Development Services (Director) enters the following Findings and Conclusions based upon the applicable criteria and standards set forth in the TMC, as well as the attachments and exhibits listed above.

¹ All Exhibits are contained in Planning and Development Services Department File No. LU22-0140. They are referenced and incorporated herein as though fully set forth.

FINDINGS

Proposal:

1. The Port proposes to develop approximately 24.49 acres of off-dock property to use as a shipping container storage and maintenance facility. Specifically, the site will be used for empty container and chassis storage, a single-high reefer pre-trip wash facility, a wheeled reefer valet drop-off location, and associated facilities. Other site work will include truck entry and exit gates on Thorne Road and Maxwell Way with a guard shelter at the Maxwell Way location, an office trailer, perimeter security fencing, site lighting and power, security cameras, a railroad crossing (between Parcel 85 & 87), a roadability area, and stormwater improvements. Work will include clearing and grubbing, earth fill, isolated excavation, subgrade preparation, base course and pavement systems, stormwater infrastructure, and other utilities. Stormwater treatment will be by overland sheet flow conveyance and at-grade biofiltration stormwater treatment.
2. A Critical Area Development Permit is required to fill two wetlands consisting of approximately 4.42 acres and remove a .9 acre biodiversity area for this development. The Port proposes to use the innovative mitigation options under the Critical Areas Preservation Ordinance (CAPO), TMC Chapter 13.11 and its Lower Wapato Creek AMS to mitigate for impacts to the wetland and biodiversity area. The proposal's Site Plan is attached to this report and decision as Attachment A.

Project Site and Surrounding Area:

3. The project site is vacant and located between the Port of Tacoma Road and Thorne Road, directly adjacent to Maxwell Way to the south.
4. The Blair Waterway is located across the Port of Tacoma Road to the east and Commencement Bay is located to the north.
5. The site and surrounding area is zoned "PMI" – Port Maritime Industrial District and is developed with high-intensity shipping, industrial, and manufacturing activities. It is largely covered with impervious surfaces and vehicle infrastructure associated with the Port of Tacoma.
6. Critical areas located on site include two wetlands and a Fish and Wildlife Habitat Conservation Area (Biodiversity Area). Wetland A which is located on Parcel 85 and Wetland B which is located on Parcel 72 were formed in the fill layer above the historic Commencement Bay tideflats. The wetlands are palustrine forested wetlands and are hydrogeomorphically classified as depressional wetlands. These features are situated within the undeveloped portions of the subject parcels.
7. Vegetation on-site primarily consists of Black cottonwood (*Populus balsamifera*), Himalayan blackberry (*Rubus armeniacus*) and Slough sedge (*Carex obnupta*). Other vegetation that occurs on the development site includes Pacific madrone (*Arbutus menziesii*), Red-osier dogwood (*Cornus sericea*), Pacific willow (*Salix lasiandra*), English holly (*Ilex aquifolium*) Reed canarygrass (*Phalaris arundinacea*), and Swordfern (*Polystichum munitum*).
8. A detailed project description, an analysis of the site's critical areas and their delineation, and the mitigation proposal are provided within Exhibits A – J; and within the Technical Memo provided by the City's Senior Environmental Specialist (SES), Karla Kluge, attached to this report and decision as Attachment B.

Applicable Code and Analysis

9. TMC 13.11.220 Application Types.

A. This chapter allows three types of Critical Area applications, which result in the issuance of an administratively appealable decision consistent with chapter 13.05. After the appeal period expires, the Director's approved decision becomes the official permit. Programmatic Restoration Projects processed under with the Minor Development Permit or the Development permit may qualify for additional time extensions according to 13.05.070.

- B. 3. Development Permit. A decision will be issued where the Director determines that avoidance and minimization have not eliminated all impacts and compensatory mitigation will be required as a result of the proposal.
- i. The applicant must meet the requirements of one of three legal tests: No Practicable Alternatives, Public Interest or Reasonable Use, and
 - ii. Demonstrate Mitigation Sequencing, and
 - iii. Provide mitigation as required in accordance with the Chapter.

10. TMC 13.01.110 Definitions

13.01.110.B - "Biodiversity Areas". Biodiversity Areas include those areas that contain native vegetation that is diverse with a mosaic of habitats and microhabitats. They include areas dominated by a vertically diverse assemblage of native vegetation containing multiple canopy layers and/or areas that are horizontally diverse with a mosaic of habitats and microhabitats. They also include areas with rare or uncommon plant species and associations designated by the City or identified by Federal and State agencies such as the Department of Natural Resources Heritage Program. They are not associated with a specific priority species and their overall habitat function may be limited due to their location in a highly urbanized area; however, they are diverse relative to other areas in the City and support common urban species.

"Biodiversity Corridors." Areas of relatively undisturbed and unbroken tracts of vegetation that connect Biodiversity Areas, other Priority Habitat and Critical Areas, including shorelines and serve to protect those areas and allow movement of common urban species.

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

13.01.110.W - "Wetlands." Areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include small lakes, ponds, swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including but not limited to irrigation and drainage ditches, grass-lined swales, canals, detention facilities, farm ponds, and landscape amenities if routinely maintained for those purposes. Wetlands do not include those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. However, wetlands do include those artificial wetlands intentionally created to mitigate conversion of wetlands.

11. **TMC 13.11.240 Legal Test(s).**

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

1. *The project cannot be reasonably accomplished using one or more other sites in the general region that would avoid or result in less adverse impacts to the Critical Area;*
2. *The goals of the project cannot be accomplished by a reduction in the size, scope, configuration or density as proposed, or by changing the design of the project in a way that would avoid or result in fewer adverse effects on the Critical Area; and*
3. *In cases where the applicant has rejected alternatives to the project as proposed, due to constraints on the site such as inadequate zoning, infrastructure or parcel size, the applicant has attempted to remove or accommodate such constraints, unless the applicant can demonstrate that such attempt would be futile.*

Staff Analysis: The applicant provided an argument documenting that the project cannot be reasonably accomplished using one or more other sites and continue to achieve the goals of the project. An Alternative Analysis was provided that reviewed all other potential sites that are available for development within the Port of Tacoma area. In order to conduct the analysis, the project scope was consolidated into the absolute minimize size, scope, and configuration possible to meet the goals of the project and operate an off-dock container support facility efficiently, effectively, and safely. Attempting to avoid and minimize any further would divide the project into small discrete spaces that do not meet the goals of the Project. The site is not constrained by zoning or infrastructure and the existing rail and wetland areas remain the only existing constraints. The result of the Alternative Analysis demonstrated that there are no feasible design alternatives, nor an alternate site that is either Port owned or would be available through purchase that would not be economically infeasible to develop following cost of acquisition, relocating businesses, demolition and site preparation, environmental investigation, and potential clean-up costs - assuming the property owner would even be willing to sell.

The SES finds that the applicant has demonstrated that they meet the requirements for this legal test through their response and analysis including the Alternative Analysis.

C. Public Interest. *In determining whether a proposed use or activity in any Critical Area is in the public interest, the public benefit of the proposal and the impact to the Critical Area must be evaluated by the Director. The proposal is in the public interest if its benefit to the public exceeds its detrimental impact on the Critical Area. In comparing the proposal's public benefit and impact, the following should be considered:*

1. *The extent of the public need and benefit;*
2. *The extent and permanence of the beneficial or detrimental effects of the use or activity;*
3. *The quality and quantity of the Critical Area that may be affected;*
4. *The economic or other value of the use or activity to the general area and public;*
5. *The ecological value of the Critical Area;*
6. *Probable impact on public health and safety, fish, plants, and wildlife; and*
7. *The policies of the Comprehensive Plan.*

Staff Analysis: The proposal is in the public interest if its benefit to the public exceeds its detrimental impact on the wetlands and Fish and Wildlife Habitat Conservation Area (Biodiversity Area). The applicant argues that the Project is of critical importance to the public need and benefit due to west coast ports being congested, especially during mid-summer to the end of the year. Disruptions in supply chain caused by delays associated with the congestion have led to increased economic and trade problems, which in turn has led to high inflation. These issues have continually increased becoming a high priority for the current Biden Administration.

The proposed project will alleviate some of the impacts through the improvement of cargo terminal efficiencies which will in turn correct economic and trade issues downstream. The impact to the on-site Category III wetlands will be permanent; however, mitigated and this Port-cargo improvement project will be permanent and will continue to offer relief for the foreseeable future. In addition, the Port, as part of the Northwest Seaport Alliance (NWSA) marine cargo gateway, will provide significant jobs and revenue to Washington State, where 40 percent of jobs are tied to trade.

The Port argues that the wetlands are degraded and formed on fill material that was placed in the early- to mid- 1900s. They do not provide fish habitat or connect to Biodiversity Corridors offsite and are not located within a floodplain area. Thus, the wetlands have limited ecological value as they are isolated in the middle of a large industrial area. The proposed mitigation area in the Lower Wapato Creek Habitat Project Advance Mitigation Site will provide mitigation and functions will be mitigated for equal to or better than the functions being impacted with the added benefit of floodplain connection, estuary, riverine, and fish habitat.

Public health and safety will improve slightly as a result of the project. Providing additional storage area for cargo storage and transport, greenhouse gas emissions will be reduced, and the potential for traffic congestion and/or incidents will diminish. In contrast, the removal of the wetlands will not have a significant effect on the public health because an enhanced stormwater treatment system will be installed replacing the water quality and hydrologic functions of the wetlands. Greenhouse gas emissions will also be sequestered within the Lower Wapato Habitat Mitigation Area.

The City's Comprehensive Plan designates the Port Industrial Area as a Manufacturing Industrial Center (MIC), defining it as an area of high intensity development, high activity patterns, and high traffic generation. Comprehensive Policies to support this proposal is included within Finding No. 19.

The SES finds that the applicant has met the requirements of this test demonstrating that the benefit to the public exceeds its impact to the wetlands.

12. TMC 13.11.250 General Standards.

A. General permit standards. No regulated activity or use shall be permitted in or adjacent to a Critical Area or buffer, management area, or geo-setback without prior approval and without meeting the provisions of this section.

- 1. The applicant has taken appropriate action to first, avoid adverse impacts, then minimize impacts and finally, compensate or mitigate for unavoidable impacts;*
- 2. The result of the proposed activity is no net loss of Critical Area functions;*
- 3. The existence of plant or wildlife species appearing on the federal or state endangered, sensitive, or threatened species list will not be jeopardized;*
- 4. The proposal will not lead to significant degradation of groundwater or surface water quality; and*

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

TMC 13.11.270 General Mitigation Requirements.

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

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

Applicant's Response: The project cannot be accomplished through avoidance. No practicable alternatives exist which would completely or partially avoid wetland impacts and still meet the goals (purpose and need) of the project. Refer to Section 6.1 for the No Practicable Alternatives legal test and the Alternative Analysis Report (Grette Associates 2022c) for additional detail.

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

Applicant's Response: Similar to avoidance, the project cannot be accomplished through minimization. No practicable alternatives exist which would completely or partially avoid wetland impacts and still meet the goals (purpose and need) of the project. Refer to Section 6.1 for No Practicable Alternatives legal test and the Alternative Analysis Report (Grette Associates 2022c) for additional detail.

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

Applicant's Response: The project will require permanent impacts to Wetlands A and B to construct the project; therefore, repairing, rehabilitating, or restoring the wetland impacts is not feasible.

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

Applicant's Response: The project will require permanent impacts to Wetlands A and B; therefore, reducing or eliminating the wetland impacts over time is not feasible.

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

Applicant's Response: There will be approximately 4.42 acres of unavoidable, permanent impacts to Wetlands A and B from the placement of fill material. As discussed in this CAPO Analysis and detailed in the Alternative Analysis Report, the project cannot avoid or minimize impacts to the wetlands and still accomplish the project goals (purpose and need). As a result, no feasible on-site compensatory mitigation opportunity is available. The project will compensate for the unavoidable impacts through a permittee-responsible mitigation (PRM) approach using credits from the Port's Lower Wapato Creek AMS, which is an approved advance mitigation site located in the Tacoma Tideflats. See the Lower Wapato Creek Habitat Project Advance Mitigation Plan (Port of Tacoma 2021a) and the Lower Wapato Creek AMS Use Plan for Port of Tacoma's Off-Dock Container Support Facility (Port of Tacoma 2021b) for additional details.

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

Applicant's Response: The Lower Wapato Creek AMS will be monitored and evaluated against a set of performance standards for a period of 10 years to demonstrate the site is providing the ecological functions and values as designed. If monitoring indicates performance standards are not being met, the Port will take a proactive adaptive management approach to ensure the site meets its performance standards. Refer to Lower Wapato Creek Advance Mitigation Plan (Port of Tacoma 2021a) for details on monitoring and performance standards.

13. **Staff Analysis – Avoidance Hierarchy:** The applicant has provided an Alternative Analysis demonstrating avoidance is not possible with the project goals and requirements as part of the mitigative hierarchy analysis required by the CAPO. The Alternatives Analysis was prepared in accordance with the guidance in the U.S. Army Corps of Engineers' (USACE) Seattle District Alternatives Analysis Framework (USACE 2016) to meet the requirements of the Clean Water Act Section 404 (b)(1) Guidelines along with 40 CFR 230.

The proposed project is required to address congestion and improve container terminal capacity and efficiency within the Port of Tacoma in order to meet the public's need and demand for increased cargo movement. The inefficiencies of the current situation in the Port has documented bottlenecks throughout the supply chain including ships at anchor across Puget Sound and idling for weeks or longer, North America manufacturing slowing or halting due to shipping restrictions, and reduced inventory on retailers' shelves. Data presented by the Port shows that 20 percent of global container fleet is stuck in port congestion.

The current Port of Tacoma terminal is above 80 percent capacity utilization, and thus as more containers are added to the Port, movement of containers continues to be reduced. Storage of containers is problematic and areas that were not meant to be used as container storage such as loading/unloading areas are being used because there are no other areas. The significant storage inefficiencies prompted the Biden Administration to help working ports to increase capacity. Currently, the Biden Administration has many on-going initiatives, including an executive order, Ocean Shipping Reform Act of 2022; and a bipartisan infrastructure deal to improve the national supply chain, including providing over \$15 million to the Port of Tacoma to provide this off-dock container facility.

Thus, the Port analyzed the entire Port area identifying heavy haul corridor routes and state and interstate highway corridors, 25-acre sites of contiguous area as close as practicably possible to the Husky and Washington United Terminals (WUT) entry Gate, with a maximum distance of 1 mile. The shape of the site must be generally square or rectangular and of sufficient width to accommodate the project design to allow for efficient, effective, and safe use and operations of the facility.

All contiguous properties meeting the design criteria were identified and of the initial 14 reviewed, five of the largest sites were reviewed as potential Alternatives, noting three of which were large enough to meet the 25-acre criteria. The continued evaluation considered availability, cost, logistics, and existing technology.

Based on the evaluation of the potentially practicable alternatives and the no-action alternative also provided, the only practicable alternative that would meet the requirements of the proposed project's purpose, need, and design criteria, based on the evaluation criteria of availability, cost, logistics, and existing technology is Alternative 1 (proposed project site). This alternative is also the Port's Preferred Alternative. Alternative 1 meets the size and proximity (geographic area) requirements, while also being primarily vacant (no permanent existing jobs or infrastructure to remove), free of known or suspected contaminants, and

Port-owned. While the site does contain a low volume rail spur bisecting the site, the shape of the site allows adequate interior space with which to design around the rail spur and to provide a crossing of the rail spur. Furthermore, utility infrastructure is present at the perimeter of the site and would not need to be demolished or rerouted within the site or extended to the site from outside utility corridors.

In this analysis, the applicant demonstrates that impacts to the wetlands are unavoidable given the proposed projects goals and demonstrated need. Minimization will not occur as the entire area of Wetland A and Wetland B will be removed. Mitigation will be provided through an Advanced Mitigation Site constructed by the Port of Tacoma.

14. **TMC 13.11.270.M. Innovative Mitigation**

The Director may approve innovative mitigation projects that area based on best available science including but not limited to activities such as advance mitigation and preferred environmental alternatives. Innovative mitigation proposals must offer an equivalent or better level of critical area functions and values than would be provided by the strict application of this chapter. Such mitigation proposals must demonstrate special consideration and protection measures for anadromous fishes. The Director shall consider the following for approval of an innovative mitigation proposal.

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

Applicant's Response: The Lower Wapato Creek AMS includes a large, complex network of interspersed habitats within the approximate 18.5-acre site, including estuary, freshwater and realigned creek channels which benefit anadromous fishes.

Biodiversity Area: The potential biodiversity area on the project site that is outside of the regulated wetland and wetland buffer area is approximately 0.9 acres in size. The proposed compensatory mitigation for impacts to the potential biodiversity areas on the project site will be provided through the use of the Port's Lower Wapato Creek AMS Use Plan for Port of Tacoma's Off-Dock Container Support Facility (the "Use Plan"; Port of Tacoma 2021a).

The buffer areas associated with Wetland A and Wetland B that are proposed to be developed by the project are approximately 2.8 acres in size. Approximately 1.6 acres of that buffer area is developed and not providing any buffer function. The 1.6 acres of developed wetland buffer at the project site is being mitigated for under the Use Plan. The proposed innovative mitigation approach will utilize the 1.6 acres of excess buffer mitigation to address the approximately 0.9 acres of potential biodiversity area impacts within the project site. The Lower Wapato Creek AMS includes a large, complex network of interspersed habitats within the approximately 18.5-acre site, including estuary, freshwater, and realigned creek channels which benefit anadromous fishes.

In summary, the proposed innovative mitigation approach will incorporate the 1.6 acres of wetland buffer that is being established at the Lower Wapato Creek AMS which is not being utilized to address the existing wetland and buffer impact. This innovative approach will create a large system of natural areas in comparison to the preservation of approximately 0.9 acres of forested area at the project site that contains a significant amount of non-native vegetation and is more ecologically beneficial than the creation, enhancement, or preservation of many individual smaller habitat areas.

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

Applicant's Response: The Lower Wapato Creek AMS will be protected and maintained in perpetuity as a habitat area. An advance mitigation agreement was finalized with Washington Department of Fish and Wildlife (WDFW) in March 2021; an agreed order was finalized with The Washington State Department of Ecology (Ecology) in June 2021; and an Ecology-approved restrictive covenant was recorded with Pierce County in March 2022. After the site completes the performance monitoring period, it will enter into the Port's long-term stewardship program Port of Tacoma 23 July 2022 Port of Tacoma Off-Dock Container Support Facility Project Grette Associates, LLC Critical Areas Preservation Ordinance Analysis to ensure its ongoing success. See the Lower Wapato Creek Habitat Project Advance Mitigation Plan for additional details (Port of Tacoma 2021a).

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

Applicant's Response: The Port has a long history of successfully creating and maintaining habitat mitigation sites. The project site is located within the service area of the Lower Wapato Creek AMS and the Lower Wapato Creek Habitat Project-Advance Mitigation Plan (Port of Tacoma 2021a) specifically defines the project site as one of the sites the Lower Wapato Creek AMS is intended to address. The Lower Wapato Creek AMS has been modeled to provide high-quality Category I estuarine wetland, freshwater wetlands, and densely vegetated upland buffers. See the Lower Wapato Creek Habitat Project Advance Mitigation Plan for additional details (Port of Tacoma 2021a).

4. Mitigation according to TMC 13.11.270.E is not feasible due to site constraints such as parcel size, stream type, wetland category, or excessive costs;

Applicant's Response: As detailed in the Off-Dock Container Support Facility Project – Critical Areas Preservation Ordinance Analysis (Grette Associates 2022), no practicable alternatives exist which would completely or partially avoid impacts to the undeveloped areas within the project site. Please refer to this document for more details. (Section 6.2 in the Port's document refers to the Mitigation Sequencing criteria response including the Alternative Analysis)

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

Applicant's Response: With regards to Wetlands: Over 90 percent of the estuary in the Puyallup River delta was lost due to over 100 years of development. The Port focuses on habitat mitigation projects that incorporate salmon recovery as opposed to wetlands with no salmon habitat. The Lower Wapato Creek AMS will have Category I estuarine wetland and the realigned creek channel, both of which are vital to a salmon's lifecycle.

With regards to Biodiversity Areas: Not applicable. This document is intended to address the 0.9 acre of potential biodiversity area impacts situated within the project site.

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

Applicant's Response: With regards to Wetlands: The age of the Lower Wapato Creek AMS determines the specific acre-credit use ratios for the type of wetland acre-credits required for compensatory mitigation (Port of Tacoma 2021a). Generally, an advance mitigation site does not generate advance mitigation credits until after the second-year post-construction; however, in some cases, fish passage barrier removal and wetland reestablishment can generate advance mitigation credits at the time of construction on a

case-by-case basis (Port of Tacoma 2021a). As outlined in the Lower Wapato Creek AMS Use Plan for Port of Tacoma's Off-Dock Container Support Facility Use Plan (Port of Tacoma 2021b), the Port is proposing slightly different credit use ratios because the functions provided at the Lower Wapato Creek AMS are significantly higher than the limited functions of the impacted wetlands. In addition to the improved functions, with the exception of installation of the native shrubs and trees at 409 East 54th Street, all of the wetland and habitat areas have been constructed, all of the emergent and grass areas have been seeded, and all of the habitat structures were installed in the Lower Wapato Creek AMS by the end of December 2021. There are two types of wetland credits available at the Lower Wapato Creek AMS: estuarine emergent (EEM) and palustrine forest (PFO). EEM wetland credits can be used to address estuarine or palustrine wetland impacts only. According to the Use Plan (Port of Tacoma 2021b), the Lower Wapato Creek AMS is expected to generate approximately 6.27 EEM acre-credits and 3.08-3.75 PFO acre-credits. Given that the project impacts are not anticipated to occur until at least the second quarter of 2023 and that the construction of the Lower Wapato Creek AMS is largely complete and currently providing some water quality, hydrology, and habitat wetland functions, the Port is proposing to utilize the Year 2-Age of Site credit use ratios (EEM: 1.8:1 and PFO: 1.85:116) defined in the Lower Wapato Creek Habitat Project Advance Mitigation Plan (Table 2; Port of Tacoma 2021a).

With regards to Biodiversity Areas: No mitigation ratio to address critical areas (including biodiversity areas) is defined in the innovative mitigation requirements outlined in TMC 13.11.270.M. Per TMC 13.11.270.M., innovative mitigation must offer an equivalent or better level of protection of critical area functions and values, including vegetation diversity and habitat complexity. Such innovative mitigation proposals must demonstrate special consideration for conservation and protection measures for anadromous fisheries. As summarized in the Off-Dock Container Support Facility Project – Critical Areas Preservation Ordinance Analysis (Grette Associates 2022), the understory within the non-wetland forested areas contains significant amounts of non-native vegetation and does not provide quality habitat. Utilizing the Lower Wapato Creek AMS will ensure no net loss and will establish a forest vegetation community that will provide high quality vegetation diversity and complex habitats, including wetlands and anadromous fish habitat within the Wapato Creek floodplain. In Grette's professional opinion, this innovative mitigation approach will achieve elevated ecological functions in comparison to the habitats that exist within the project site.

7. Public entity cooperative preservation agreements such as conservation easements are applied.

Applicant's Response: Public entity cooperative preservation agreements have been applied. See Section 6.4.4.2 and refer to the Off-Dock Container Support Facility Project – Critical Areas Preservation Ordinance Analysis (Grette Associates 2022) for more details.

Analysis for use of innovative mitigation: Innovative mitigation may be used for activities such as Advance Mitigation and preferred environmental alternatives, both of which the Port has proposed using the Advance Mitigation Plan at the Lower Wapato Creek Habitat Project. This form of mitigation will address regional needs through watershed planning including additional habitat for anadromous fish and provide elevated functions associated with the preservation of wetlands and upland forested areas in perpetuity.

15.TMC 13.11.320 Buffers

A. General. A buffer area shall be provided for all uses and activities adjacent to a wetland area to protect the integrity, function, and value of the wetland. Buffers adjacent to wetlands

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

16.TMC 13.11.340 Wetland Mitigation Requirements

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

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

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

1. Restoration (re-establishment and rehabilitation) of wetlands on upland sites that were formerly wetlands.
2. Creation (Establishment) of wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of non-native introduced species. This should only be attempted when there is an adequate source of water and it can be shown that the surface and subsurface hydrologic regime is conducive for the wetland community that is being designed.
3. Enhancement of significantly degraded wetlands in combination with restoration or creation. Such enhancement should be part of a mitigation package that includes replacing the impacted area and meeting appropriate ratio requirements.

D. Mitigation ratios.

1. The ratios contained within Table 5 shall apply to all Creation, Re-establishment, Rehabilitation, and Enhancement compensatory mitigation.

<i>Table 5. Mitigation ratios for projects in Western Washington that do not alter the hydro-geomorphic setting of the site***</i>				
<i>Category and Type of Wetland</i>	<i>Re-establishment or Creation</i>	<i>Rehabilitation</i>	<i>1:1 Re-establishment of Creation (R/C) and Enhancement (E)</i>	<i>Enhancement Only</i>
<i>All Category III</i>	<i>2:1</i>	<i>4:1</i>	<i>1:1 R/C and 2:1 E</i>	<i>8:1</i>

Staff Analysis – Wetland Mitigation Requirements: Based on the above factors and an anticipated earliest start of the impact project construction of 2nd or 3rd Quarter of 2023, for the Category III wetland impact, the Port proposes the credit use ratio in Table 3 (use ratios for EEM credits) corresponding to “Age of the Site (Years)” 2 and 0 & 1 for Table 4 (use ratios for PFO credits). Therefore, the EEM wetland credit use ratio (credit: impact acre) will be 1.8:1 (Table 3, Year 2) and the PFO wetland credit use ratio will be 2:1 (Table 4, Year 0 & 1). (The tables referred to can be found within the Lower Wapato Creek AMS Use Plan).

As the final number of EEM and PFO wetland acre-credits generated by the Lower Wapato Creek AMS are not known at this time, the Port proposes to use all generated PFO wetland credits to mitigate this project first and use the EEM wetland credits to fulfill any remaining credit need. The Lower Wapato Creek AMS is anticipated to generate approximately 6.27

EEM acre-credits and 3.08 to 3.75 PFO acre-credits for a total of 9.35-to-10.02-acre credits. An example of potential types of mitigation credits and the associated credit use ratios that are needed to compensate for the project impacts can be found in **Table 5. Lower Wapato Creek AMS Credits Proposed for Use by Impact Project** in the *Off-Dock Container Support Facility Project Critical Areas Preservation Ordinance Analysis*, July 2022, prepared by Grette Associates.

In summary, the SES agrees that the proposed mitigation will comply with the required wetland mitigation ratios involved with filling the wetland area. The use of credits within the Lower Wapato Creek Advance Mitigation Area will fully mitigate functions lost that are associated with the Category III low habitat value wetlands and replace them with high habitat value Category II wetlands that also include habitat for anadromous fish area even though wetland area was lost.

17. TMC 13.11.550.E. Fish and Wildlife Habitat Conservation Area Standards

E. The following shall apply for proposed modifications within or affecting Biodiversity Areas and Corridors.

1. In determining which areas are least sensitive to development impacts, the following criteria shall apply:

A. A minimum of 65 percent of the Biodiversity Area and Corridor area shall be left in an undisturbed natural vegetated state. The undisturbed area set aside shall contain all other Priority Habitats, Priority Species, and Critical Areas and Buffers that may be present, per applicable standards.

B. A contiguous Biodiversity Corridor with a width of 300-feet shall be retained connecting onsite and offsite Priority Habitats and Critical Areas including shorelines, as well as significant trees per the definition below. The minimum 300 feet shall be a contiguous area that enters and exits the property.

C. Retain exceptional trees and rare or uncommon plant species or habitat types as identified by the City or by state or federal agencies. Conifers and Madrone are considered exceptional trees.

18. TMC 13.11.560 Biodiversity Area and Corridor Mitigation Requirements

A. Mitigation must compensate for the adverse impacts and achieve equivalent or higher ecological functions including, vegetation diversity and habitat complexity and connectivity.

B. Enhancement or Restoration requires the following ratios:

Onsite Mitigation	Offsite Mitigation
1.5:1 Enhancement or Restoration	3:1 Enhancement or Restoration

C. The protection covenant or conservation easement recorded with Pierce County Assessor's Office shall include all mitigation areas including those located off-site.

Staff Analysis for Fish and Wildlife Conservation Areas impacts (Biodiversity Areas):

The SES finds that the proposed innovative mitigation approach that will utilize the 1.6 acres of excess buffer mitigation to replace the approximately 0.9 acres of Biodiversity Area loss at the subject development site is a reasonable mitigation ratio (1.8:1) where none is provided for replacement of Biodiversity Areas within the critical area code. The Biodiversity Area on site is thus generally viewed as an extension of functioning wetland buffer at Wetland A and Wetland B that will be replaced at the same mitigation site as the wetlands. The proposed mitigation for the forested Biodiversity Area is combined with the proposed mitigation for the wetland buffer areas of Wetland A and Wetland B.

19. The One Tacoma: Comprehensive Plan, which sets forth policy regarding development in

the City of Tacoma, provides the following policy guidance relative to this development permit application:

Goal EN-5 Plan at a watershed scale to restore and protect natural resources that contribute to watershed health.

Policy EN-1.11 Coordinate and partner with federal, state, regional and local governmental jurisdictions and the public to manage the City's environmental assets.

Policy EN-1.12 Coordinate plans and investments with other jurisdictions, air and water quality regulators, watershed councils, soil conservation organizations and community organizations and groups to maximize the benefits and cost-effectiveness of watershed environmental efforts and investments.

Policy EN-1.13 Coordinate transportation and stormwater system planning in areas with unimproved or substandard rights of way to improve water quality, prevent localized flooding, enhance pedestrian safety and neighborhood livability.

Policy EN-1.16 Coordinate with state and federal public agencies and tribal governments when reviewing permits to ensure streamlined permit review and avoid redundant regulatory requirements.

Policy EN-1.17 Assess and periodically review the best available science for managing critical areas and natural resources and utilize the development of plans and regulation while also taking into consideration Tacoma's obligation to meet urban-level densities under the Growth Management Act.

Policy EN-3.1 Ensure that the City achieves no-net-loss of ecological functions over time.

Policy EN-3.3 Require that developments avoid and minimize adverse impacts, to the maximum extent feasible, to existing natural resources, critical areas and shorelines through site design prior to providing mitigation to compensate for project impacts.

Policy EN-3.4 Encourage mitigation approaches when preservation is not feasible that maximize the intended ecosystem benefits. Require on-site or use of established approved mitigation banks versus off-site mitigation; unless off-site mitigation within the same watershed will improve mitigation effectiveness.

Additional Information:

20. Karla Kluge, SES, the subject matter expert for critical area review within the Planning and Development Services Department, conducted several site visits, has visited the surrounding area for previous critical area permits, and is very familiar with area. Ms. Kluge reviewed the proposal materials provided by the applicant, the public comments, and provided a Technical Memorandum indicating that the proposal complies with the requirements of TMC 13.11.

The Director notes that substantial weight is given to Ms. Kluge's review of the proposal for potential impacts to critical areas. Her comments are included in Attachment B and in some cases, are repeated verbatim herein.

Environmental Review:

21. Pursuant to SEPA, WAC 197-11-340, the Port of Tacoma, as Lead Agency, issued an environmental determination for the project. The SEPA Determination is included with the application documents within Exhibit B. For further information regarding SEPA, please contact the project applicant.

Notification and Comments:

22. The application was determined to be complete for review on September 30, 2022.

23. Written notice of the application was transmitted to state agencies and for public review on October 20, 2022. Prior to the end of the 30-Day public comment period, a virtual public meeting was requested by the Northeast Tacoma Neighborhood Council. The public meeting was held on January 12, 2023, at which almost all of the participants expressed substantial concerns about the proposal. These concerns were highlighted again within written public comments received before the public comment period ended on January 19, 2023.

- **Public Support:** One letter of support was provided by WUT which highlights the need for more land to accommodate higher volumes of import and export cargo and is critical to reduce congestion on land and by sea. If developed as planned, this proposal will improve service levels for manufacturers, warehousing, and transloading – which will benefit everyone.
 - At the public meeting a representative from the International Longshore and Warehouse Union (ILWU) expressed his support as the Port’s docks are operating at capacity. This proposal will cut down substantially on time that truckers from eastern Washington wait on long lines, with their trucks idling to get into the Port. Instead, they will be able drop off and pick up at this facility. This facility will also allow the truckers more flexibility on the days they are on Tacoma’s roads instead of being limited by the current small window of time to get in and out of the Port.
 - Long queue lines of idling trucks and a bottle neck of trucks on City and Port roads are environmental health concerns for Port workers. This project will help to reduce these impacts and improve the delivery of time for imported and exported goods, which is good for the Tacoma and Washington economies.
- **Public Opposition:** All of the other written comments and oral comments provided at the public meeting expressed deep concern and frustration over the proposed loss of wetlands and tree canopy within the middle of the Port and the Puyallup Tribe Reservation, both of which contribute to the presence and migration of birds and other wildlife, within and outside of the Port, and capturing carbon. This is unfathomable, especially in the middle of the climate and biodiversity crises when we need to be protecting as much forest as possible.

There was a general consensus that the virtual public meeting is a bad format as it did not allow for the type of back-and-forth discussion that the some of the public was expecting. For example, the public wanted to further discuss the alternative sites identified by the Port and how they could improve its operational efficiency.

Also, there were concerns that the range for the public notice and public meeting notice were not adequate, that there was no notice of this project on the City Council and Port websites, nor have there been discussions at their public meetings. Finally, it was noted that the application states that the Port planned starting construction in October 2022.

This does not give the public any faith, as the Port thought it would start building before the public meeting. This does not give the public confidence in the application process

as it is being handled backwards.

24. Exhibit P contains the public meeting documents and written comments that include photographs, videos, local media coverage for this application, a detailed summary of all comments received, and a response from staff when applicable. This Exhibit also contains the applicant's response to the written public comments and to the questions from the chat feature at the public meeting.
25. No comments were received from outside agency reviewers. The applicant provided a copy the Washington State Department of Ecology Section 401 Water Quality Certification letter. See Exhibit K.
26. Advisory comments and recommended conditions from the City reviewers are provided below and within the comment memos contained within Exhibit Q. As with the City's SES, the Director gives substantial weight to the City reviewers, as they are the subject matter experts for each of their respective disciplines.

Conclusion of Law as Finding of Fact:

27. Any conclusion of law herein stated which may be deemed a finding of fact herein is hereby adopted as such.

CONCLUSIONS²

1. The Planning Director has jurisdiction in this matter. See TMC 13.05.080.A.6.
2. The applicant bears the burden of proof to demonstrate the proposal's consistency with the policies of the One Tacoma: Comprehensive Plan, including its implementing regulations set forth in TMC Chapter 13.11, and other applicable City Ordinances.
3. Specific to TMC 13.11.220.B.3. - Development Permit: The applicant has met the requirements for issuance of a Critical Area Development Permit.
4. Specific to TMC 13.11.240 A. and C. – Legal Tests: The applicant has satisfied the legal test requirement under the Public Interest Test and the No Practicable Alternatives Test.
5. Specific to TMC 13.11.250 and TMC 13.11.270 – General Standards and General Mitigation Requirements: The applicant provided justification under the avoidance and minimization hierarchy through the use of an Alternative Analysis justifying that avoidance is not possible with achievement of project goals.

The Alternative Analysis and legal test arguments apply to both wetlands and Biodiversity Areas when evaluating avoidance and minimization. Neither the wetlands nor the Biodiversity Areas can be avoided while also allowing the Port Cargo areas to be developed. The entirety of the site area is necessary to achieve project goals.

Finally, the proposed mitigation will fully mitigate or replace functions lost at the impact site with more desirable functions including anadromous fish support, no net loss of wetlands in area, and associated functions and long-term preservation of forested wetland and upland areas.

² Conclusions are based upon the applicable criteria and standards set forth in the Tacoma Municipal Code (TMC), the policies of the One Tacoma: Comprehensive Plan, and the Attachments and Exhibits listed herein. Any conclusion of law hereinafter stated which may be deemed a finding of fact herein is hereby adopted as such.

6. Based on the above findings and conclusions, and with the following conditions, the proposal is consistent with TMC Chapter 13.11 and the applicable City's Comprehensive Plan policies. See Findings 1 – 26, Attachments A – B, and Exhibits A – Q.

DECISION

Based upon the above findings and conclusions, the request for a Critical Area Development Permit is **Approved**, subject to the following conditions:

Conditions:

1. Based on an increase of traffic from this proposal on Maxwell Way, the following traffic conditions are required with the development permits for this proposal:
 - a. New sidewalk on Thorne Road abutting the site shall be a minimum of 7 feet wide. The sidewalk alignment and buffer width shall match that of the existing sidewalk. This new sidewalk will be required to cross the rail spur, where it must be equipped with appropriate safety features.

The sidewalk alignment should be shifted within the right-of-way near the at-grade crossing to ensure a perpendicular crossing of tracks. This shift should bring the sidewalk closer to the street. Consider bicycle design speed guidance in Chapter 10-2.1 of the Public Works Right-of-Way Design Manual when designing the shift in alignment. On each side of the crossing, the sidewalk should shift back to an alignment and offset that is consistent with existing sidewalk on Thorne Road, south the railroad tracks.
 - b. New sidewalk on Maxwell Way abutting the site shall be a minimum of 5 feet wide with a planter strip. If a planter strip is omitted and sidewalk is located abutting the curb, the sidewalk shall be a minimum of 7 feet wide.
 - c. Gates will not be allowed to open into the right-of-way or be placed in a manner that impedes public pedestrian or vehicular access. Gates for truck/passenger access on Thorne Road and Maxwell Way shall be set back a minimum of 20 feet from the right-of-way to allow vehicles to pull-off of the road while opening the gate. Gates for emergency access only shall be signed appropriately and can be located on the property line. No driveway is proposed to directly serve Port of Tacoma Road. Any change in travel patterns that would allow trucks to use different driveways would require a separate approval through a new permit process for the driveway modification.
 - d. The Maxwell Way driveway shall be reconstructed at the time of development to address impacts to Maxwell Way. The City will allow a minimum 6 inches of Asphalt Concrete over 13 inches of Crushed Surface Base Course or alternate pavement design that meets City standards to address truck traffic and turning movements. Pavement Design Worksheet (PD-02) can be utilized for consideration. The extents of the pavement reconstruction will be determined as part of the Work Order Permit.
2. The development permit applications shall include the Inadvertent Discovery Plan provided within the Cultural Resources documents for this application. See Exhibits M, N, and O.
3. Notice on Title. The applicant must record Notice on Title per TMC Section 13.11.280 prior to the final approval of all development permits.
4. A Conservation Easement shall be placed on the Advanced Mitigation Site (i.e., The Lower Wapato Creek AMS) prior to final approval for development permits.
5. The applicant shall mitigate wetland and Biodiversity Area impacts as described in the Lower Wapato Creek Advance Mitigation Site Use Plan for Port of Tacoma's Off-Dock

Container Support Facility, June 16, 2002, Corps Reference No. NWS-2020-557-WRD, and Technical Memorandum (Biodiversity Areas), April 7, 2023, prepared by Grette Associates.


7. Prior to impacting wetlands, the applicant shall submit to Ecology the following as proof of advance mitigation credit withdrawal:
 - a. A ledger showing that the required amount of credits has been deducted from the advance wetland mitigation site.
 - b. The ledger must include the Order number, Order issuance date, impact acreage, the amount of credits required by the Order, and the date the credit was deducted.
8. The applicant shall provide a copy of the letter received from Ecology to the City that documents written notice that the obligation has been met.
9. The applicant shall provide a copy of the Army Corp of Engineers (ACE), or concurrence that a permit is not required, prior to issuance of any development permits.
10. Work authorized under this Critical Area Development Permit shall commence within five (5) years of the effective date of this decision.

Advisory Notes:

The below notes are meant to provide additional information to the applicant relative to the specific development proposal. These notes are not conditions of the permit nor do they constitute a complete review of the project.

1. This permit is only applicable to the proposed project as described above and based upon the information submitted by the applicant. Modifications to this proposal and future activities or development may be subject to further review and additional permits as required in accordance with the TMC.
2. The applicant must obtain other approvals prior to construction as required by other local, state and federal agencies including the ACE and WDFW which have requirements that may be applicable to the project.
3. Staff's First Review Comment Memo, dated February 24, 2023, is contained within Exhibit Q and provides advisory comments from all reviewers, except for Critical Areas and Traffic Engineering who have provided separate memos.

ORDERED this 18th day of April 2023



Peter Huffman
Director, Planning and Development
Services Department

FULL DECISION TRANSMITTED by e-mail to:

Port of Tacoma - Mark Rettman – mrettmann@portoftacoma.com, Kristin Ang - kang@portoftacoma.com, Leslie Barstow - Community@portoftacoma.com,

lbarstow@portoftacoma.com, Norman Gilbert – ngilbert@portoftacoma.com, Matthew Mauer - mmauer@portoftacoma.com

City Staff – Shanta Frantz, Elliott Barnett, Carol Wolfe, Shari Hart, neighborhoodcouncils@cityoftacoma.org, Karla Kluge, Jennifer Kammerzell, Mieke Hoppin, Britany Avila, Chris Seaman, Craig Kuntz, Dan Hansen, Dan Reed, Heather Croston, Joy Rodriguez, Lyle Hauenstein, Reuben McKnight, Vicki Marsten, Carleen Bruner, Joe Graff

Public Commenters - Heidi Stephens - heidigs@hotmail.com, Janeen Provazek – provaj@hotmail.com, Yvonne McCarty – NE Tacoma Neighborhood Chair - yvonne.mccarty@comcast.net, Brock Graber - bgrabber@ilwulocal23.org, Claudia Riedener – ixia@harbournet.com, Corinne Ells - corinnnee@gmail.com, Lester Pogue - lespoguejr@gmail.com, John Carlton – ixora@harbournet.com, Bradley Thompson - bradley@350tacoma.org, Melanie Sheats – nickchriszack@hotmail.com, Alex Coleman - Alec.Coleman@USWUT.com, Bob Myrick - BobMyrick@msn.com, Janet Higbee-Robinson – jhhigbeerobinson@gmail.com, Brian Mathis - bragmatic@gmail.com, David Jens Thomas Pedersen - djtpedersen@gmail.com, Doug Mackey - douglasalanmackey@gmail.com, Julie Andrzejewski - julieruth17@gmail.com, Ellen Floyd – edsf@harbournet.com, Julie Miller - jumill038@gmail.com, Morf Morford - mmorford@tacomadailyindex.com, Pam Beal - pambeal@gmail.com, mkimmerling8@gmail.com, Phil Harty - philhartymusic@gmail.com, Robin Evans-Agnew - robevansagnew@gmail.com

SUMMARY OF DECISION TRANSMITTED by e-mail or first-class mail to:

New Tacoma Neighborhood Council
Northeast Neighborhood Council
Railroad Lines - pygbuhay@up.com, kkellem@cityoftacoma.org, scott.huston@bnsf.com, perry.weinberg@soundtransit.org
Puyallup Tribe of Indians - SEPARreview@puyalluptribe-nsn.gov
Metro Parks - joeb@tacomaparks.com, martys@tacomaparks.com, marya@tacomaparks.com, alisa.ohanlonregala@tacomaparks.com
WA Dept of Fish and Wildlife - R6SSplanning@dfw.wa.gov
Pierce County Assessor-Treasurer – dbrandv@co.pierce.wa.us
Port of Tacoma - twarfield@portoftacoma.com, dwilson@nwseaportalliance.com
TPCHD – sepa@tpchd.org
U.S. Army Corps of Engineers (Pierce County West) – halie.endicott@usace.army.mil
WA Dept of Ecology – zmey461@ecy.wa.gov

Puyallup Tribe of Indians, 3009 East Portland Avenue, Tacoma, WA 98404
U.S. Fish & Wildlife Service, Attn Judy Lantor, 510 Desmond Drive SE #102, Lacey, WA 98503
Tahoma Audubon Society, Attn Matt Mega, 2917 Morrison Road West, University Place, WA 98466

PURSUANT TO RCW 36.70B.130, YOU ARE HEREBY NOTIFIED THAT AFFECTED PROPERTY OWNER(S) RECEIVING THIS NOTICE OF DECISION MAY REQUEST A CHANGE IN VALUATION FOR PROPERTY TAX PURPOSES CONSISTENT WITH PIERCE COUNTY'S PROCEDURE FOR ADMINISTRATIVE APPEAL. TO REQUEST A CHANGE IN VALUE FOR PROPERTY TAX PURPOSES YOU MUST FILE WITH THE PIERCE COUNTY BOARD OF EQUALIZATION ON OR BEFORE JULY 1ST OF THE ASSESSMENT YEAR OR WITHIN 30 DAYS OF THE DATE OF NOTICE OF VALUE FROM THE ASSESSOR-TREASURER'S OFFICE. TO CONTACT THE BOARD CALL 253-798-7415 OR WWW.CO.PIERCE.WA.US/BOE.

RECONSIDERATION/APPEAL PROCEDURES

Any request for RECONSIDERATION and/or APPEAL must be submitted in the applicable manner as outlined below on or before **May 2, 2023**.

RECONSIDERATION:

Any person having standing under the ordinance governing this application and feeling that the decision of the Director is based on errors of procedure or fact may make a written request for review by the Director within 14 days of the issuance of the written order. The fee for reconsideration is **\$300.00**. This request shall set forth the alleged errors, and the Director may, after further review, take such further actions as deemed proper, and may render a revised decision.

A request for RECONSIDERATION of the Director's decision in this matter **must be submitted in writing, by e-mail to sfrantz@cityoftacoma.org**. Filing of the reconsideration shall not be complete until both the reconsideration request and required filing fee are received. THE FEE SHALL BE REFUNDED SHOULD THE RECONSIDERATION REQUESTOR PREVAIL. (Pursuant to Section 2.09.020 of the TMC, fees for reconsideration shall be waived for qualifying senior citizens and persons who are permanently handicapped who are eligible for tax exemption because of financial status.)

APPEAL TO THE HEARING EXAMINER:

Any decision of the Director may be appealed by any aggrieved person or entity as defined in Sections 13.01.050.A. and 13.05.090 of the TMC, within 14 days of the issuance of this decision, or within seven days of the date of issuance of the Director's decision on a reconsideration, to appeal the decision to the Hearing Examiner.

An appeal to the Hearing Examiner is initiated by filing a Notice of Appeal accompanied by the required filing fee of **\$1,200.00**. Filing of the appeal shall not be complete until both the Notice of Appeal and required filing fee has been received. THE FEE SHALL BE REFUNDED TO THE APPELLANT SHOULD THE APPELLANT PREVAIL. (Pursuant to Section 2.09.020 of the TMC, fees for appeals shall be waived for qualifying senior citizens and persons who are permanently handicapped who are eligible for tax exemption because of financial status.)

The Notice of Appeal **must be submitted in writing, by e-mail to sfrantz@cityoftacoma.org and hearing.examiner@cityoftacoma.org**. The Notice of Appeal shall contain the following:

- (1) A brief statement showing how the appellant is aggrieved or adversely affected.
- (2) A statement of the grounds for the appeal, explaining why the appellant believes the administrative decision is wrong.
- (3) The requested relief, such as reversal or modification of the decision.
- (4) The signature, mailing address and telephone number of the appellant and any representative of the appellant.

"The Rules of Procedures for Hearings" may be viewed at:

http://cms.cityoftacoma.org/hex/HEX_RulesofProcedureforHearings_ResolutionNo39843_Adopted10.pdf