



City of Tacoma  
Hearing Examiner

### CERTIFICATION

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through City of Tacoma Mail Services to the parties or attorneys of record herein. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED August 16, 2019, at Tacoma, WA.

Louisa Legg

August 16, 2019

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Re: HEX2019-011 (LU18-0301)

Applicant: Tacoma Life Properties, LLC

Dear Parties,

Concerning the above reference matter, please find enclosed copies of the Hearing Examiner's Findings of Fact, Conclusions, and Recommendation and Decision both entered on August 16, 2019.

Sincerely,

Louisa Legg  
Office Administrator

Enclosures (2): Recommendation and Decision

Cc: FIRST CLASS MAIL DELIVERY

Signature Healthcare Services, LLC/Tacoma Life Properties LLC, 1450 W Long Lake Rd  
STE 340, Troy, MI 48098-6330

Robert Morton, 1930 S. Adams, Tacoma, WA 98405-1003

J'Karen Sears, 3816 South 21<sup>st</sup> Street, Tacoma, WA 98405-1001

ELECTRONIC MAIL DELIVERY

#### Outside Agencies/Citizens:

Lisa Blakeney, Legal Assistant, Gordon Thomas Honeywell LLP; Hana Attar, Esq., Vice President, Managing Counsel, Signature Healthcare Services, LLC; Daniel Balmelli, Executive Vice President, Barghausen Consulting Engineers, Inc.; Erik Tolonen, Vice President-New Business Development, Signature Healthcare Services, LLC; Robert McNeill, Senior Planner, Barghausen Consulting Engineers, Inc.; Debbie Terwilleger, Planning Director, Metropolitan Park District of Tacoma; Debbie Cockrell, The News Tribune; Pam Roach, District 2, Pierce County Council; Deanna Gonzalez, Paralegal, Phillips Burgess PLLC; Heather Burgess, Attorney at Law, Phillips Burgess PLLC; Robert O. Modarelli III, President, Bellarmine Preparatory School; Charles Mann, Tacoma Central

Neighborhood Council; Janet G. Kurz, RN, LMHC; Mark R. Steepy, PE, Principal, kpff; Jessica Malaier; Dana Miller; Stephanie Frieze; Jerry Kunz and Maureen Howard; Kelly Racke, Environmental Health Specialist II, Tacoma-Pierce County Health Department; Eva Barber, WA DOE, Toxic Cleanup Program; Chris Montague-Breakwell, WA DOE Water Quality; Stephanie Jolivette, Local Governments Archaeologist, WA Dept. of Archaeology & Historic Preservation; Susan Hayami; David Matthews; Ralph Mitchell; Bob Brodland; Larry Martin; Cynthia Ross; Tom Parker.

**City of Tacoma:** Shanta Frantz, Senior Planner, City of Tacoma, Planning and Development Services; Angie Krupa, Legal Assistant, Tacoma City Attorney, Civil Division; Vicki Marsten, PW Traffic Safety & Review; Lieutenant Daniel Still, Tacoma Police Department; Shannon Brenner, PDSO Environmental Specialist-Biologist; Karina Stone, PE, PDSO Site Development Group; Larry Criswell, Sr. Engineer, PDSO Site Development Group; Lucas Shaddock, Plans Examiner II; Lyle Hauenstein, Solid Waste Collection Supervisor; Chris Seaman, Fire Admin. Bureau; Tony Daniels, Utility Service Specialist, Power T&D New Svcs. Engineering; Troy Stevens, Sr. Real Estate Specialist, Real Property Svcs.; Shelley Shaffer, LID Representative; Jesse Angel, Utility Service Specialist, Water Distribution Engineering, Reuben McKnight, Historic Preservation Officer.



**OFFICE OF THE HEARING EXAMINER**

**CITY OF TACOMA**

**REPORT AND RECOMMENDATION**

**TO THE CITY COUNCIL**

**HEARING EXAMINER FILE NO.:** HEX2018-011 (LU18-0301)

**APPLICANT:** Tacoma Life Properties, LLC, the current owner of record of the Subject Property (as defined below), is the applicant for the present rezone request (hereinafter the “Applicant” or “TLP”).<sup>1</sup> TLP was represented at the hearing by attorney William T. Lynn of Gordon Thomas Honeywell. For purposes of this Report and Recommendation, the defined terms “TLP” and “Applicant” also include any employees, agents, contractors and/or corporate parents/affiliates of the Applicant in regard to conditions and compliance issues set forth below.

**SUMMARY OF REQUEST:**

The Applicant proposes to develop the Tacoma Behavioral (Healthcare) Hospital (the “Hospital”), an in- and out-patient psychiatric hospital on approximately 5.5 acres of land in the city of Tacoma. The required land use applications presently required for this development are as follows:

- A site rezone to change the existing C-1 General Neighborhood Commercial District and T Transitional District zoning designations to R-4-L Low-Density Multiple-Family Dwelling District (the “Rezone”). The Site is also located within the South Tacoma Groundwater Protection Overlay District, which designation will not change under the present application;
- A conditional use permit (“CUP”) to authorize the Hospital in the R-4-L Low-Density Multiple-Family Dwelling District;
- A parking lot development standards variance (the “Parking Variance”) to allow a portion of the parking for the Site to be located in front of the proposed building, facing South 19th Street; and
- A critical areas verification permit (the “CAVP”) to verify the presence of critical areas, on or within 300 feet of the Site, and to demonstrate that the proposal will avoid possible impacts to the critical areas and meet applicable standards under Tacoma Municipal Code (“TMC”) Chapter 13.11, the City’s Critical Areas Preservation Ordinance (“CAPO”).

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<sup>1</sup> City Planning and Development Services’ documentation refers to Bob McNeill, Barghausen Consulting Engineers, Inc. as the applicant. This is incorrect. Barghausen Consulting Engineers appears to be an agent for the actual Applicant and record owner of the Subject Property, Tacoma Life Properties, LLC. Generally, the applicant for a land use permit must be the record owner of the property to which the permit applies. *See Clark v. Sunset Hills Mem’l Park*, 45 Wn.2d 180, 273 P.2d 645 (1954); and *Mangat v. Snohomish Cty.*, 176 Wn. App. 324, 326, 308 P.3d 786, 787 (2013) *rev. den.* 179 Wn.2d 1012, 316 P.3d 495 (2014). It should be noted here that at least two parent and/or affiliate entities of the Applicant were referred to throughout the hearing. These are Signature Healthcare Services, LLC which, from the Washington Secretary of State registration records appears to be a Michigan limited liability company authorized to do business in Washington, and Tacoma Behavioral Healthcare Hospital, which does not appear to be registered with the Secretary of State as yet.

**LOCATION:**

The Site consists of six (6) parcels with frontage on South 19<sup>th</sup> Street and South Durango Street and includes Pierce County Tax Parcel Nos: 0220121017, 0220121040, 0220121038, 0220121026, 0220121058 and 0220121160 (the “Subject Property” or the “Site”).

**RECOMMENDATION:**

The Hearing Examiner recommends approval of the rezone, subject to conditions set forth herein below.<sup>2</sup> For informational purposes, the three (3) other permits referenced above are being conditionally approved by separate decision. Those approvals are conditional because, if the City Council does not approve the Applicant’s rezone request, the permit approvals will be void.

**PUBLIC HEARING:**

After reviewing the Preliminary Report (the “Report”—Ex. C-1) submitted by the City of Tacoma (“City”) Planning and Development Services Department (“PDS”), and all attendant information on file, the Hearing Examiner convened a public hearing on the Rezone on July 18, 2019. As alluded to in FN 2, pursuant to Tacoma Municipal Code (“TMC”) sections 1.23.120 and 13.05.040.E, the Rezone was consolidated with the attendant requests for a CUP, the Parking Variance, and the CAVP (the “Permits”). The Hearing Examiner heard presentations regarding those applications as part of the public hearing required for the Rezone. The hearing closed on July 19, 2019, when the Applicant submitted its written responses to public safety concerns presented at the hearing (Ex. A-4).

**TESTIMONY:**

**For the City:**

Shanta Frantz, Senior Planner, PDS  
Lt. Daniel Still, Tacoma Police Department (“TPD”)

**For the Applicant:**

Jean Stallon, Signature Health Care Services, LLC’s Regional Vice President  
Daniel K. Balmelli, Barghausen Engineers  
A.J. Plank, IN2IT Architecture  
Hana Attar, Signature Health Care Services, LLC’s Managing Counsel, Strategic Planning

Members of the public who testified are set forth separately below.

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<sup>2</sup> As will be explained further below, the majority of the “conditions” set forth herein are not conditions precedent to approving the Rezone. Rather, they are development conditions and informational advisory conditions to the Applicant regarding its proposed development of the Subject Property and will require compliance as the proposed development moves forward.



## **FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION:**

### **FINDINGS OF FACT:**

#### **The Requested Rezone**

1. The Applicant has applied for approval to Rezone the Site changing the existing C-1 General Neighborhood Commercial District (“C-1”) and T Transitional District zoning designations to R-4-L Low-Density Multiple-Family Dwelling District (hereinafter “R-4-L”). *Frantz Testimony, Ex. A-1, Ex. C-1, Ex. C-18.* Applicant’s decision to request the change to R-4-L came after extensive discussions with PDS staff regarding the best fit with Applicant’s intended development of the Subject Property as a psychiatric/behavioral health hospital (the “Development”). *Frantz Testimony, Balmelli Testimony; Ex. C-1, Ex. C-9~ Ex. C-11, Ex. C-18.*

2. The request to change the existing zoning to R-4-L would generally be considered a down-zone of the Subject Property. Both City staff and representatives of the Applicant testified that they settled on the current path as the best way to achieving a regulatory framework that would allow the Applicant’s Development to happen given the Applicant’s need for the Development to result in one integrated building on the Site rather than multiple buildings. *Id.* The change to R-4-L would allow the size of building that the Development proposes to be built on the Site without the need for an additional floor area ratio (“FAR”) variance. Currently, the T Transitional zoning in place on roughly half the Site would not allow the Hospital on that side of the Subject Property even with a CUP. In either C-1 or R-4-L, a hospital can be built under a CUP. Frantz testified that, when a change in zoning is requested, PDS typically steers an applicant to the lowest classification available that will still accommodate the applicant’s intended development, as was done here. *Id.*

#### **The Subject Property/Site**

3. The Site is bounded by South 19<sup>th</sup> Street to the north (which tees up with South Proctor Street), South Madison Street to the west, and South Durango Street to the east. The Site is just under six (6) acres in area. South 19<sup>th</sup> Street is about 80 feet in width and is a multi-lane principal arterial road. South 19<sup>th</sup> Street is also designated as a pedestrian street by the City’s Comprehensive Plan (the “Comp Plan”) and the Land Use Code (*See Ex. C-1 citing to Comp Plan, Urban Form Element at p. 2-48, Figure 7, and TMC 13.06.100.C.2.* *Ex. C-1; Frantz Testimony, Balmelli Testimony.*

4. The Site’s elevation increases in a general northeast direction. This increasing slope continues up across South Durango Street with a steep 20- to 30-foot (20'-30') grade change to the developable portion of the residential property directly across the street. *Ex. C-1.*

5. The Site is located on a small plateau, in a bowl-shaped depression below the grade of South 19<sup>th</sup> Street, which abuts the Site to the North, as already referenced above. Most, if not all, of the pre-existing residential structures have been removed from the Site, leaving moderate to heavy

vegetation. The existing drop off from the South 19<sup>th</sup> Street sidewalk to the main elevation of the Site is about 20 feet, requiring terracing, an 11-foot+/- retaining wall<sup>3</sup> and a 10-foot slope easement for the City to maintain the stability of South 19<sup>th</sup> Street. In addition, the topography generally slopes down from northeast to southwest with about a 34-foot grade change from South Durango Street to South Madison Street. *Ex. C-1, Ex. C-3, Ex. C-9.*

6. The Site is made up of the six (6) parcels referenced above, with the lower southwest parcel's irregular shape being the result of a 2007 boundary line adjustment ("BLA") (PDS BLA File No. MPD2007-40000095202). Under this BLA, ownership of the lower wetland and its buffers (as delineated at the time) was ceded to MetroParks Tacoma. *Ex. C-1.*

7. An electrical power line and poles bisect the Subject Property from north to south, and it is presumed that they cannot be relocated or have any structures built underneath them. The existence of the power line then places certain constraints on the proposed Development. *Balmelli Testimony; Ex. A-1, Ex. C-3, Ex. C-18.*

8. The Site is not located within any historic district, nor is it located within the 1873 Puyallup Tribe Settlement Area. However, per the recommendation of the Washington Department of Archaeology and Historic Preservation ("DAHP"), a copy of the State Environmental Policy Act (SEPA) Determination was sent separately to the Puyallup Tribe for comment. No comments from the Puyallup Tribe were received. *Ex. C-1.*

### **The Surrounding Area**

9. The surrounding area is a diverse neighborhood with commercial-retail, hospital and medical offices, single-family and multi-family residential uses all within relatively close proximity to the Subject Property. MetroParks Tacoma owns the real property directly to the south which contains the wetland referenced above (*FoF 6*). Directly to the west, across South Madison Street, is Plaza 19 Associates, a medical office building. The remaining properties directly adjacent to the Subject Property, or across a street to the east or west are improved with single-family homes. *Ex. C-1.*

10. The larger neighborhood is bounded by State Route 16 to the west and south, South 12<sup>th</sup> Street to the north, and Sprague Avenue to the east. Larger- and medium-scale residential, commercial and recreational development within the neighboring area include, but are not limited to:

- To the east along South 19<sup>th</sup> Street are Pacific Northwest Eye Associates, Everlast Dentistry, Hearon Dentistry, Allenmore Hospital and Medical Center, which also now includes MultiCare's Wellfound Behavioral Hospital,<sup>4</sup> Allenmore Golf Course, Allenmore Marketplace; Drake Psychological Services, and MVP Physical Therapy, among others;

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<sup>3</sup> The reference to this in the Report appeared to be missing the word "wall." If some other type of "retaining" was meant, it was unclear as to what.

<sup>4</sup> A similar use to the proposed Development/Hospital.



- To the west along South 19<sup>th</sup> Street and southwest of the Site are the Plaza 19 Professional Center, Tacoma Nature Center – which provides Pre-K through 6<sup>th</sup> Grade classes and a summer camp, Snake Lake Park, the Heidelberg Sports Complex, Fred Meyer, MetroParks Tacoma’s Headquarters, and Cheney Stadium;
- The Park Rose Care Center (nursing home) is located directly across South 19<sup>th</sup> Street from the Site;
- Multi-family properties in the immediate area include, but are not limited to, The Park 19 Apartments, Union Crossing and Unionaire Apartments, Belle Terrace Apartments, and Brookdale Allenmore Senior Living Solutions; and
- The Veterans of Foreign Wars (VFW) Post No. 91 is located on South Union Avenue, across the street from the Wellfound Behavioral Hospital and in between the Unionaire and Belle Terrace Apartments. *Ex. C-1, Ex. C-18.*

11. There are also (2) high schools, (2) elementary schools and several smaller neighborhood parks within the larger neighborhood. The area schools and parks are specifically as follows:

- Bellarmine Preparatory High School and Foss High School are located to the south and southwest;
- Franklin Elementary School and Delong Elementary School are located off of South 12<sup>th</sup> Street and are directly adjacent to Franklin Park and Delong Park, respectively; and Peck Athletic Complex is located at South 15<sup>th</sup> Street and Sprague Avenue. *Ex. C-1, Ex. C-18.*

12. As earlier noted, the Site’s topography increases in a general northeast direction (*FoF 4*), continuing up and across toward South Durango Street with a steep 20- to 30-foot (20' - 30') change in the surface grade to the developable portion of the residential property directly across the street. This change in grade between the Subject Property and the surrounding area has been pointed to as a factor that will help to minimize the visual impacts of the proposed Development on the surrounding neighborhood. *Balmelli Testimony.*

13. South Madison and South Durango Streets are both dead-end residential streets, about 30 feet (30') and 35 feet (35') in width, respectively. The most southern portion of South Durango Street narrows down to about fifteen feet (15') in width.<sup>5</sup> *Ex. C-1.*

14. Pierce Transit bus stops are located on South 19<sup>th</sup> Street in front of the Site and just west of South Proctor on the north side of South 19<sup>th</sup> Street. South 19<sup>th</sup> Street is fully developed with curb,

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<sup>5</sup> PDS indicated that, in the near future, a 20-foot right-of-way dedication for South Durango Street to provide half street improvements for a future street alignment may become necessary based on this Development and inquiries received regarding possible development on the east side of South Durango Street.



gutter, sidewalks and street trees. The neighborhood streets north of South 19<sup>th</sup> Street are for the most part built out with curb, gutters and sidewalks on at least one side of street. The residential streets adjacent to the Site south of South 19<sup>th</sup> Street are typically not fully developed, and some streets such as South Durango and South Madison Streets are gravel roads with no curbs or gutters. *Ex. C-1.*

**Prior Development History**

15. City staff found historic permit records for single-family residences, utilities, and accessory structures for the parcels that make up the Subject Property, all of which have since been removed. There was also an officially approved accessway determination in 1969 to allow access off a private roadway from South Durango Street for a new single-family dwelling at 1926 South Durango Street. *Ex. C-1.*

16. In 2006, a previous owner of the Subject Property and its consultant team applied for a Site Rezone from the Site's then in place R-2 One-Family Dwelling District designation to the current C-1 and T District designations, together with a wetland development permit and SEPA determination. The prior owner intended to develop the Subject Property with three (3) office/medical buildings, totaling about 69,000 sq. ft. and parking facilities for 330 off-street parking spaces. Although the Central Neighborhood Council and MetroParks Tacoma appealed the SEPA MDNS, ultimately in 2008, the Hearing Examiner and City Council affirmed the SEPA MDNS, and approved the Site Rezone (under Ordinance No. 27701) and Wetland Development Permit. *Frantz Testimony; Ex. C-1, Ex. C-4.*

17. As required at the time of approval, a Concomitant Agreement containing the conditions from the approved applications was recorded with Pierce County under Auditor's File No. 200807030640. While the Site Rezone and SEPA actions do not expire, the associated Wetland Development Permit did expire in February of 2013, five (5) years after its final approval date. If the City Council approves the Rezone, the Rezone classification and attendant conditions would supersede and replace the existing Concomitant Agreement. *Ex. C-1.*

**Zoning/Comp Plan Background**

18. There have been multiple rezones along South 19<sup>th</sup> Street, from the original R-2, single-family zoning put in place in 1953, to the current mix of single-family and lower-scale multi-family and commercial zoning that are currently in place along the South 19<sup>th</sup> Street corridor. The zoning and uses to the south and north of South 19<sup>th</sup> Street are predominately single-family and low-scale multi-family residential. The zoning changes were created through a mix of site rezones initiated by individual property owners and some area-wide rezones initiated by the City in order to align zoning with the underlying Comprehensive Plan designation for any given area. *Frantz Testimony; Ex. C-1, Ex. C-18.*

19. The Tacoma Central Crossroads Mixed-Use Center that encompasses the Allenmore Hospital and Medical Center and the shopping center to the east was created in 2009 with an area-wide rezone from the prior HM Hospital Medical District and various commercial districts under City Ordinance No. 27818. *Ex. C-1.*

20. The City's Comprehensive Plan (the "Comp Plan") Future Land Use Map designates the Subject Property as being located within the "Neighborhood Commercial" land use category. The variety of zoning districts within the neighborhood correspond with a similar variety of land use designations under the Future Land Use Map. There is a diverse mix of land use designations that surround the Site, including: General Commercial, Parks and Open Space, Neighborhood Commercial, Multi-Family (Low-Density), Major Institutional Campus, Single-Family Residential, and the Crossroads Mixed-Use Center. *Ex. C-1*. No area-wide rezone action affecting the Subject Property has been taken by the City Council in the two years preceding the present rezone application. *Ex. C-1*.

### **The Proposed Development**

21. The Development is intended to consist of a single building with attendant improvements (parking, landscaping, etc.). The Applicant stated that a single building is necessary for general operational and safety reasons. *Balmelli Testimony, Plank Testimony*. The Site's topography and the existence of the power line referenced above (*FoF 7*) dictate that the building be located at the southeast end of the Subject Property as shown in the Applicant's proposed site plans, with parking in the front and to the west. *See Exhibits A-1, C-1, C-3, and C-18*. The building is proposed to be approximately forty feet (40') tall at its highest point, but due to the bowl-like depression on the Site, this highest point will not be forty feet (40') above the grade of surrounding streets (closer to 20' at the South 19<sup>th</sup> Street frontage), which minimizes visual impacts to the surrounding neighborhood. *Balmelli Testimony*. The building itself is proposed to be approximately 83,000 sq. ft. in floor area over two stories. *Balmelli Testimony, Plank Testimony; Ex. A-1, Ex. C-1, Ex. C-3, Ex C-18*.

22. The Development proposes 184 parking stalls on the Site. Access will be from South 19<sup>th</sup> Street. Access to the building will be in front, for patient intake, to the west, primarily for outpatient purposes, and the rear, primarily for delivery. Using general projections for "hospitals," the Development is projected to generate 2,344 daily trips, although Applicant witnesses testified that this type of hospital typically generates less traffic than a more traditional hospital. As proposed (and conditioned), the Development will include significant landscaping to lessen visual impacts and screen the Development from the surrounding area. *Balmelli Testimony, Plank Testimony; Ex. A-1, Ex. C-1, Ex. C-8, Ex. C-18*.

23. In the City's review, as well as at the hearing, both in City testimony and from the three members of the public who testified, concerns about the proposed Development centered around safety of the Development in relation to the surrounding community. The City offered two (2) pages of written questions aimed at obtaining more information regarding the proposed Development's intended operations and safety measures. *Still Testimony*. These questions were answered verbally at the hearing,<sup>6</sup> and in writing at the Examiner's request. The Applicant's written answers are now Exhibit A-4 of the record, and are incorporated herein as such. The Exhibit A-4 answers provide significant detail regarding the intended operation of the Hospital.<sup>7</sup> Most significantly, as regards the concerns expressed

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<sup>6</sup> Primarily through Atar's testimony.

<sup>7</sup> When answered and submitted as Exhibit A-4, the two pages of questions became approximately five and a half pages of answers/information.



about safety in the neighborhood, the Applicant (a) outlined its “robust” safety and discharge program, (b) indicated that it will not be treating sex offenders at the Hospital, and (c) indicated that it will not be treating anyone who is involved in criminal proceedings. *Stallon Testimony, Atar Testimony; Ex. A-4, Ex. C-9*. The Examiner finds that the Applicant’s proposed safety measures, as attested to in Exhibit A-4 specifically, and as further conditioned herein below, will provide adequate safety measures for the Development to move forward.

24. The Applicant’s proposed Hospital will operate under a very “robust” regulatory regime starting at the federal level under the Centers for Medicare & Medicaid Services (“CMS”).<sup>8</sup> The Examiner finds that Applicant’s proposed use of the Subject Property can be made compatible with the surrounding neighborhood, provided that the Applicant develops the Subject Property as conditioned herein and in related permitting approvals, by maintaining strict compliance with all applicable laws and regulations, and with the operating parameters proposed in Exhibit A-4.

25. The Applicant’s proposed Development has been through a prior review process with the State of Washington Department of Health (“DOH”) to obtain a Certificate of Need for the Development specifically at the Subject Property.<sup>9</sup> *Atar Testimony; Ex. C-13*. Atar testified that the process to obtain a Certificate of Need pursuant to Revised Code of Washington (“RCW”) 70.38 took four (4) years and that the Certificate of Need had an effective period of only two (2) years.

### **Environmental Review**

26. Pursuant to the State’s *SEPA* Rules (WAC 197-11-340) and the City of Tacoma’s Environmental Code (TMC 13.12), the PDS Director issued a Mitigated Determination of Environmental Nonsignificance (“MDNS”) for the Rezone and the proposed Development on June 13, 2019. *Frantz Testimony; Ex. C-1, Ex. C-5, Ex. C-18*.

27. Environmental review was required because rezone applications are not exempted as minor land use decisions. Further, the amount of expected grading activity, the size of the proposed building, and the number of parking spaces all exceed the flexible thresholds for *SEPA* exemptions. The MDNS was based on a review of the Applicant’s Environmental Checklist, the Joint Aquatic Resource Permit Application (JARPA), the project plans, written comments received from neighbors and other interested parties, comments received from outside agencies, special studies submitted - which include a Traffic Impact Analysis, Wetlands, Streams, and Critical Habitats Evaluation and Delineation Report and Buffer Establishment Program, Hydrology Report and a Preliminary Stormwater Site Plan. The *SEPA* appeal period passed with no appeal of the MDNS having been filed. *Frantz Testimony; Ex. C-1, Exs. C-3~C-8, Ex. C-18*.

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<sup>8</sup> CMS is part of the Department of Health and Human Services.

<sup>9</sup> What the Applicant submitted to the record appears to be, and is actually referred to internally as an “Intent to Issue’ a Certificate of Need,” or an “Intent to Issue’ commitment,” but does not appear to be an actual Certificate of Need. *Ex. C-13*. Washington Administrative Code (“WAC”) 246-310-010(11) defines a “Certificate of need” as “[a] written authorization by the secretary's [DOH] designee for a person to implement a proposal for one or more undertakings.”



## **Public Notice, Comment and Testimony**

28. In accordance with the requirements of *TMC* 13.05.020 regarding notice of rezone applications, on May 10, 2019, a Public Hearing Notice was mailed to 248 persons, including owners of record and/or taxpayers of record for property within 1,000 feet of the Site and mailed and/or e-mailed to the Central Neighborhood Council, qualified neighborhood and business groups, City staff, outside agencies, and individuals/organizations that requested notice prior to the application becoming complete for review. In addition, the required Legal Notice was published on May 15, 2019, in the Tacoma Daily Index, property information signs were posted on the Site, and the Public Hearing Notice was posted on the City's website, along with the application documents. *Frantz Testimony; Ex. C-1, Ex. C-18.*

29. Written public comments on the Rezone/Development were received from Janet Kurz, attorney Heather L. Burgess and engineer Mark R. Steepy of engineering firm kpff on behalf of client Vest Thurston, LLC,<sup>10</sup> Jessica Malaier, Dana Miller, Stephanie Frieze, Jerry Kunz, Maureen Howard, Susan Hayami,<sup>11</sup> Pam Roach, and Charles Mann. In these written comments, concerns were expressed regarding protecting wetlands in the area of the Subject Property, concentrating two behavioral health facilities too close together, perceived detrimental impacts from people "suffering from mental illnesses" being in this neighborhood, the geographic range of patients that may be admitted, Signature's treatment of its employees, and traffic generation, among others. Of these commenters, some were outright supportive of the Development (e.g., Pam Roach), while other were supportive of this type of facility, but preferably in another location than the Subject Property. *Ex. A-2, Ex. C-1, Ex. C-6.*

30. Three members of the public provided verbal testimony at the hearing: J'Karen Sears, Robert Broadland, and Larry Martin. Similar to the written comments, testimony at the hearing generally acknowledged the need for better and more access to mental health care, but also expressed concern about patients at the Hospital creating unsafe conditions in the neighborhood. *Sears Testimony, Broadland Testimony, Martin Testimony.*

31. As part of the review process for the requested Rezone and attendant permits, PDS provided notification of the requested Rezone to various City departments/divisions, and outside governmental and non-governmental agencies. Departmental/agency comments and requirements regarding this proposal are included in the PDS Report. These agencies/departments/divisions recommended conditions they determined would be properly attached to the Rezone were it to be approved by the City Council, and the Examiner has included them, as found appropriate, below at Conclusion 10. *Ex. C-1 Ex. C-18.* In response to inquiry from the Examiner, the Applicant indicated that its team was familiar with the City staff and agency recommended conditions for the Rezone/Development and that the Applicant does not actively oppose any of these conditions. *Balmelli Testimony.*

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<sup>10</sup> Vest Thurston, LLC appears to be an entity affiliated with a recently opened behavioral health hospital in Lacey, WA. Stallon testified that rather than considering Vest Thurston, LLC a competitor, she viewed it more as another provider with a similar mission in an area of the health care industry that needs more access.

<sup>11</sup> Susan Hayami was present for much of the hearing, but had to leave prior to the public testimony portion of the proceeding, and so submitted her comments in writing instead.

32. The PDS Report in this matter accurately describes the requested Rezone and intended Development, general and specific facts about the Site, applicable sections of the Comp Plan, and applicable regulatory codes. The PDS Report is marked as Exhibit C-1, and by this reference, is incorporated herein as though fully set forth. To the extent that anything in the PDS Report conflicts with the contents of this Report and Recommendation, this Report and Recommendation shall control. *Ex. C-1.*

33. Any conclusion herein which may be more properly deemed or considered a finding of fact is hereby adopted as such.

### **CONCLUSIONS:**

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding to conduct a hearing and make a recommendation to the City Council regarding the Rezone. The final rezone decision is made through an ordinance by the City Council. *See TMC 1.23.050.A.1, TMC 13.06.650, and TMC 13.05 generally.*

2. The requirements of SEPA have been met by the City's review and issuance of the MDNS,<sup>12</sup> which has not been appealed.

3. Under TMC 13.06.650.B, the applicant for a rezone is required to demonstrate consistency with all of the following criteria:<sup>13</sup>

1. That the change of zoning classification is generally consistent with the applicable land use intensity designation of the property, policies, and other pertinent provisions of the Comprehensive Plan.

2. That substantial changes in conditions have occurred affecting the use and development of the property that would indicate the requested change of zoning is appropriate. If it is established that a rezone is required to directly implement an express provision or recommendation set forth in the Comprehensive Plan, it is unnecessary to demonstrate changed conditions supporting the requested rezone.

3. That the change of the zoning classification is consistent with the district establishment statement for the zoning classification being requested, as set forth in this chapter.

4. That the change of the zoning classification will not result in a substantial change to an area-wide rezone action taken by the City Council in the two years preceding the filing of the rezone application. Any application for rezone that was pending, and for which the Hearing Examiner's hearing was held prior to the adoption date of an area-wide rezone, is vested as of the date the application was filed and is exempt from meeting this criteria.

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<sup>12</sup> *See TMC 13.12.440.*

<sup>13</sup> Numbering is kept the same as in the TMC for consistency.

5. That the change of zoning classification bears a substantial relationship to the public health, safety, morals, or general welfare. *TMC 13.06.650.B.*

The Applicant bears the burden of establishing, by a preponderance of the evidence that the requested rezone conforms to all of the foregoing criteria. *TMC 1.23.070.A.*

**Consistency with the Comp Plan** (TMC 13.06.650.B.1)

4. As pointed out above at FoF 20, the Comp Plan’s Future Land Use Map designates the Site as being located within the “Neighborhood Commercial” land use category. The Comp Plan characterizes “Neighborhood Commercial” as follows:

“This designation is characterized primarily by small-scale neighborhood businesses with some residential and institutional uses. Uses within these areas have low to moderate traffic generation, shorter operating hours, smaller buildings and sites, and less signage than general commercial or mixed-use areas. There is a greater emphasis on small businesses and development that is compatible with nearby, lower intensity residential areas.”<sup>14</sup>

The Comp Plan then indicates that the “corresponding zoning” for “Neighborhood Commercial” would be C-1 General Neighborhood Commercial District and T Transitional District, which is the zoning currently in place on the Site. As already explained above (*FoF 1 and 2*), PDS staff and the Applicant settled on applying for a change to R-4-L with an attendant CUP in order to accommodate the proposed facility being in a single building without the need for a FAR variance.

Again as pointed out above (*FoF 1 and 2*), a change from the current zoning to R-4-L would generally be considered a down zone to a less intense designation. It is notable that the requirement set forth in TMC 13.06.650.B.1 requires only **general consistency** “[w]ith the applicable land use intensity designation of the property, policies, and other pertinent provisions of the Comprehensive Plan.” Given the Applicant’s intended use of the Subject Property for a health care facility/hospital, it is difficult to conclude that the intended use would be inconsistent with the Comp Plan without disagreeing with the City’s prior 2006 decision that changed the zoning to its present designation given that the proposed use at the time was primarily for medical offices, a similar use to what is proposed by the Applicant. *FoF 16 and 17.*

Under the circumstances, the Examiner is forced to look more to the intended use of the Subject Property for consistency with the Comp Plan than to the requested classification of R-4-L itself. Given that, the Examiner recommends that any approval of the requested Rezone should be limited to the Subject Property being developed as proposed by this Applicant. In the event that the Development does not get built within a reasonable time after approval—governed by the effective period of the Applicant’s Certificate of Need, when issued—the zoning for the Subject Property should revert to C-1 General Neighborhood Commercial District and T Transitional District.

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<sup>14</sup> *Comp Plan, Urban Form Chapter*, at p. 2~8.



Ultimately, the use proposed under the requested Rezone is generally consistent with the Comp Plan, whether under the present zoning, or under a change to R-4-L, provided that the attendant CUP is approved to allow the “hospital” use in the R-4-L.<sup>15</sup> Institutional uses are contemplated in “Neighborhood Commercial” areas.<sup>16</sup> The proposed Development is an institutional use. The proposed Development should also produce lower traffic generation than a more traditional hospital (and lower traffic trips than the 2006 previously approved project), shorter visibly open-to-the-public operating hours than a traditional hospital and some commercial uses, and certainly less signage than one would expect in general commercial or mixed-use areas. As such, the Examiner concludes that the requested change in zoning, as facilitating the particular proposed use, is generally consistent “[w]ith the applicable land use intensity designation of the property, policies, and other pertinent provisions of the Comprehensive Plan,” as required by TMC 13.06.650.B.1.

**Changed Conditions** (TMC 13.06.650.B.2)

5. In PDS staff’s analysis of the criterion set forth in TMC 13.06.650.B.2, staff noted both that the 2006 rezone application was to allow medical offices to be developed on the Subject Property and also stated that, “The underlying change in condition that supports the change of use from a medical office use to a hospital is the increased need for hospitals and other essential public facilities that serve underserved populations such as substance abuse facilities, mental health facilities, group homes and transitional housing.” The City further pointed to DOH’s issuance of the Intent Letter as an indicator of changed conditions.

Certainly medical/health care uses are no stranger to the area surrounding the Subject Property after all the prior rezones along South 19<sup>th</sup> Street (*See FoF 18*), and the City already approved a proposed medical/health care use for the Site in 2006. While medical offices differ somewhat from a hospital, Applicant’s Hospital could be seen as less impactful than what was proposed in 2006, further justifying the “down zone” to R-4-L. In addition, DOH, the state agency charged with oversight and licensing for medical/health care facilities has favorably determined the suitability of the Site for the Applicant’s Hospital/Development. The “change” in conditions could be considered to have occurred already when the Site was rezoned from R-2 to the present designation, which similarly allows a hospital under a CUP (at least in the C-1 side of the Site). The requested change to R-4-L ends up being more of a fine-tuning than an outright change given the similarity between the use proposed as part of the 2006 rezone, and the present request. What *has* blatantly changed since 2006 is the significantly greater need for mental health care facilities/services, both in Washington and nationwide.

Given the history of rezones in and around the Subject Property, and the increasing need for services of the type intended by the Hospital/Development, the Examiner finds this criterion satisfied.

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<sup>15</sup> Hospitals are allowed in R-4-L as a conditional use.

<sup>16</sup> It does not appear that TMC Title 13 expressly defines “institutional uses” anywhere; however, table 1 at TMC 13.06.510.A.1.g does list hospitals as an institutional use, as does at least one other use table in TMC 13.06.

**Consistency with District Establishment Statement** (TMC 13.06.650.B.3)

6. The District Establishment Statement for the R-4-L Low-Density Multiple-Family Dwelling District provides as follows:

R-4-L Low-Density Multiple-Family Dwelling District. This district is intended primarily for low-density multiple-family housing, mobile home parks, retirement homes and group living facilities. It is similar to the R-4 Multiple-Family Dwelling District, but more restrictive site development standards are intended to minimize adverse impacts of permitted and conditional uses on adjoining land. The district is characterized by amenities and services associated with single- and two-family residential districts, and it is located generally along major transportation corridors and between higher and lower intensity uses. *TMC 13.06.100.B.7.*

As mentioned multiple times already above, the Applicant is not requesting the Rezone because the intended use is outright permitted in the R-4-L. Hospitals are conditional uses in most zones of the City. PDS staff concluded that a shift to R-4-L was the best move for this Applicant and the intended use, to ensure a well-reviewed and well-conditioned final development, in other words, enabling the City to require “more restrictive site development standards,” “to minimize adverse impacts of permitted and conditional uses on adjoining land.” That determination was not incorrect.

In general, no conditional use is necessarily going to fit completely with the District Establishment Statement for a given district because conditional uses will be more of an exception to the typical use than the rule. That is true here. Nonetheless, the Applicant’s intended use is not out of character for much of the surrounding area, particularly the uses along South 19<sup>th</sup> Street. Health care facilities could certainly be considered an amenity or service associated with more traditional R-4-L uses, and the proposed Hospital is not too far afield from expressly favored uses such as retirement homes and group living facilities either. The Hospital will be located “along [a] major transportation corridor[ ] [South 19<sup>th</sup> Street] and between higher and lower intensity uses” that are present in and around the Subject Property.

The Rezone is not a complete four-point landing when compared with the District Establishment Statement for the R-4-L, but as a conditional use in that zoning district, it is difficult to imagine how it could match up in all respects. The same is true when the intended use is compared against the existing zoning at the Site (C-1 Commercial – T Transitional). Nonetheless, the Hospital proposed for a rezoned R-4-L Site seems to be enough of a match with the District Establishment Statement for the R-4-L that the Examiner concludes that this criterion is met.

**Recent Area-Wide Rezone** (TMC 13.06.650.B.4)

7. No area-wide zoning involving or affecting the Subject Property has been taken by the Tacoma City Council in the two years preceding the filing of the present rezone application. As a result, the criterion set forth at TMC 13.06.650.B.4 is satisfied.

**Relationship to the Public Welfare** (TMC 13.06.650.B.5)

8. The requested Rezone of the Subject Property would allow the Applicant's proposed Hospital to be built, assuming the other permits needed are approved, most notably the CUP. The State DOH has already made its determination (or at least has stated its intention to so determine) that the Applicant's proposed Hospital is needed in Tacoma, specifically at the Subject Property. It is virtually axiomatic that more access is needed to mental healthcare.

TMC 13.06.650.B.5 requires a rezone request to "bear[ ] a substantial relationship to the public health, safety, morals, or general welfare." From the standpoint of knowing that more and better mental health care is needed, not only in Tacoma, but in our society in general, it is not difficult to say that the use intended under the Rezone will indeed "bear[ ] a substantial relationship to the public health, safety, morals, or general welfare" by offering more access to better treatment than is available now.

The most prevalent concern expressed both in writing and verbally at the hearing also relates to public safety, the question being, "won't this facility make our neighborhood less safe?" That concern notwithstanding, no one presented evidence that neighborhoods surrounding facilities such as the Applicant's proposed Hospital somehow become less safe. The perception that such might become the case appears to be founded on stereotypical fears relating to mental health issues in general.

The Applicant testified and stated elsewhere in the record that safety is a top priority. To that end, the Applicant (a) outlined its "robust" safety and discharge program, (b) indicated that it will not be treating sex offenders at the Hospital, and (c) indicated that it will not be treating anyone who is involved in criminal proceedings. *FoF 23*.

The bottom line here is that mental health issues of all types seem to be becoming more prevalent in society, if for no other reason than that, as a society, we are becoming grudgingly more willing to acknowledge and address them. Were there any evidence in the record that a facility such as the proposed Hospital makes the surrounding neighborhood less safe, more inquiry might be needed to declare this criterion satisfied. There is no such evidence in the record, however.<sup>17</sup> People with mental health challenges live in our neighborhoods already—wherever we are. Having more and better treatment options for at least the range of issues that the Applicant intends to treat would seem to result in a net increase in the safety of Tacoma in general and the surrounding neighborhood specifically as a part of the overall Tacoma community. The Examiner concludes that this criterion is met.

9. Accordingly, the requested rezone is recommended for approval subject to the following conditions:

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<sup>17</sup> By stating the foregoing, the Examiner is not discounting the concerns expressed by all commenters. The concerns are legitimate even if for no other reason than that they are simply raised by the Tacoma citizens who took the time to register them. All viewpoints, opinions and concerns are welcome in the public review process for a rezone such as this. That said, the Examiner has to base his recommendation on actual evidence presented.



**A. RECOMMENDED CONDITIONS OF APPROVAL:** “Conditions” set forth herein are derived primarily from the PDS Report, other submissions in the record, and testimony from the hearing. Nearly all of the conditions below have more to do with compliance issues related to the Applicant’s intended Development on the Subject Property after approval of the requested Rezone than they do with the approval of the Rezone itself, i.e. they are not recommended herein as conditions precedent to the approval of the Rezone. Compliance with later development conditions prior to granting the Rezone is physically and temporally impossible.

As set forth at FoF 32 above, the PDS Report is incorporated herein by reference. Some of the more general language from section J of the PDS Report (“Recommended Conditions of Approval”) is not repeated here (e.g., City and other agency contact information). That does not mean that, if this Rezone is approved, the Applicant should not still reference helpful language from the PDS Report as guidance for its development process, and it also does not mean that some of these very general “conditions” *will not* apply to later development of the Subject Property.

To the extent that any express language in the PDS Report conflicts with the language in this Report and Recommendation, this Report and Recommendation shall control if adopted as part of the City Council’s approval of the Rezone. Omission of language from the PDS Report in this Report and Recommendation, particularly in the recommended Conditions of Approval below, does not necessarily constitute a conflict.

City Council approval of the requested rezone does not release the Applicant or the ultimate operator of the facility from state or other permitting requirements for subsequent development of the Subject Property, nor does anything in this Report and Recommendation take precedence over application of, and compliance with, the TMC. *See Usual Condition 2 below.*

Therefore, should the rezone request be approved, the Examiner recommends making the following conditions derived from the reviewing City and Tacoma Public Utility staff conditions of approval for the rezone, and as augmented by the Examiner, applicable to the development of the Subject Property.

**CONDITIONS OF APPROVAL:**

1. LAND USE

- a. Any future development of the Site shall be consistent with the R-4-L Low-Density Multiple-Family Dwelling District development standards (TMC 13.06.100), the Landscaping Code (TMC 13.06.502), Parking Code (TMC 13.06.510), Transit Support Facilities (TMC 13.06.511), Bicycle and Pedestrian Support Standards (TMC 13.06.512), all other applicable sections of the Tacoma Municipal Code, and the conditions of the ultimate decision on this Rezone. This condition may be modified or supplemented by conditions that arise from the decision on the attendant CUP and PLDSV.
- b. A Lot Combination is required prior to issuance of the building and development permits.

- c. A retaining wall design plan that includes cross-sections and exterior elevations shall be provided to show the height and exterior finish for the retaining walls and their relationship to the required landscape buffer plantings around the Site.
- d. The required Landscape Plan shall provide the type, size and location of trees, shrubs, and groundcover plan for the Landscape Buffer within the north front, south rear and east and west side yards, except for within the regulated critical areas buffers, as follows:
  - i. A minimum of one evergreen tree for every 150 square feet arranged in a manner to obstruct views into the Subject Property.
  - ii. Shrubs at a rate of one shrub per 20 square feet of landscaped area. In addition to being from minimum 3-gallon sized containers, shrubs shall be at least 16 inches tall at planting and have a mature height of at least 3 feet.
  - iii. Groundcover plants for entire landscape buffer area.
- e. The site development permit plans shall show compliance with the following light, glare trespass and pollution requirements:
  - i. Light trespass. Light trespass from sites in non-residential zoning districts shall not exceed 3 lux (0.3 foot candles) at parcel boundaries with residential zoning districts. This luminance value shall be measured at the eye in a plane perpendicular to the line-of-sight when looking at the brightest source in the field of view at any point on the property line of any residential parcel.
  - ii. Residential light pollution. To ensure control of and to minimize glare, any lighting within 100 feet of a R-District shall use luminaires which meet the Illuminating Engineering Society's cutoff light distribution specification.
  - iii. General light pollution. To control and minimize glare, all other luminaries for area and/or off-street parking shall meet the Illuminating Engineering Society's semi-cutoff light distribution specification. Lighting shall be directed toward the Subject Property, with cutoff shields or other means, to prevent spillover glare to adjacent properties or vehicular traffic. Luminaires with a light source not greater than 1800 lumens (100 watt incandescent) are exempt from this requirement.
- f. The site development permit plans shall show benches or other seating, tables, trees, planters, and a fountain, informational kiosk or art work in a design to provide a quiet respite area for visitors and employees.

2. CRITICAL AREAS

- a. Notice on Title shall be recorded and critical area fencing and signage will be installed at the edge of all critical area buffers located on the subject Site per TMC 13.11.280(A)(1).

- b. A mitigation and monitoring plan that meets the requirements of TMC 13.11.230 will be submitted for all areas disturbed in construction and placement of the dispersal trenches in critical area buffers prior to issuance of any development permits.
- c. A performance and maintenance bond for the mitigation will be posted prior to issuance of any development permits per TMC 13.11.290.
- d. At the time of submittal for development permits, a final Stormwater Site Plan with pre- and post-hydrology analysis must be submitted demonstrating that the hydroperiod for all critical areas shall be maintained. The report will be reviewed for compliance with TMC 13.11 as well as the City's Stormwater Management Manual (the "SWMM"). Failure to maintain the hydroperiod of critical areas will require mitigation sequencing to include a reduction in the degree or magnitude of the Development and additional permitting as required under TMC 13.11.220.
- e. Private stormwater easements must be obtained for all stormwater management Best Management Practices ("BMPs") (dispersal trench, vegetated flow paths) located on private property under different ownership.

3. STORM AND SANITARY SEWERS

- a. The proposal shall comply with all applicable requirements contained in the City of Tacoma Stormwater Management Manual (the "SWMM"), Side Sewer and Sanitary Sewer Availability Manual, TMC 12.08, TMC 2.19, TMC 10.14, TMC 10.22 and the City's Right-of-Way Design Manual in effect at time of vesting land use actions, building or construction permitting.
- b. Any utility construction, relocation, or adjustment costs shall be at the Applicant's expense.
- c. The Development proposes to discharge the Site surface water to maintain wetland hydrology via dispersion trenches and vegetated flow paths. As proposed, the vegetated flow path required is partly on adjacent private property. Private stormwater easements must be obtained for stormwater management BMPs located on private property under different ownership. The easement shall encompass the BMP, including any required downstream vegetated flow paths required to maintain the downstream discharge conditions. The easement shall permit access for maintenance or replacement in the case of failure. If an easement is unable to be obtained, the private BMP shall be relocated to be fully contained on the Subject Property, including any required downstream vegetated flow paths required to maintain the downstream discharge conditions.
- d. Per Volume 5, Section 1.1 of the SWMM, enhanced water quality treatment is required for all pollution generating surfaces discharging to the stream and the wetland.
- e. Per Volume 1, Section 3.4.7 of the SWMM, flow control is required for this Development for the portion of the Site discharging to the stream.
- f. Per Volume 1, Section 3.4.8 of the SWMM, wetlands protection is required for this Development for the portions of the Site discharging to the wetland, either directly or indirectly.



- g. The hydrology report and associated plans submitted as part of the Rezone request are considered preliminary and intended to determine the feasibility of compliance with the SWMM. The drawings and associated reports are not approved for construction at this stage.

4. STREETS, DRIVEWAYS, AND SIDEWALKS

**South 19th and South Madison Streets intersection**

- a. Curb ramps at the intersection of South 19th and South Madison Streets shall be constructed meeting current City of Tacoma and Americans with Disabilities Act (“ADA”) standards. Curb installation shall include the SW corner and the SE corner receiving ramps and shall be directional.

**South 19th Street**

- b. The Applicant/Developer shall remove and replace existing 5’ sidewalk abutting the Site with a new 7’ sidewalk meeting Public Right of Way Accessible Guidelines (“PROWAG”) and ADA requirements, and be installed to the approval of the City Engineer.
- c. South 19th Street fronting the Subject Property shall be restored in accordance with the City’s Right-of-Way Restoration Policy.
- d. The Applicant/Developer shall remove asphalt from planters and replace with grass.

**South 19th and South Proctor Streets Intersections**

- e. Curb ramps at the intersection of South 19th and South Proctor Street shall be constructed meeting current City of Tacoma and ADA standards. Curb installation shall include the SW corner and the SE corner and shall be directional receiving ramps.

**South 19th and South Durango Streets Intersection**

- f. Curb ramps at the intersection of South 19th and South Durango Streets shall be constructed meeting current City of Tacoma and ADA standards. Curb installation shall include the SW corner and the NW corner receiving ramps.

5. HISTORICAL AND CULTURAL PRESERVATION

- a. In order to reduce the potential for adverse effects to undiscovered archaeological resources, the Applicant shall provide a professional Archaeological Survey and an Unanticipated Discovery Plan for the project area with its Site Development Permit application.
- b. The Unanticipated Discovery Plan shall include, but not be limited to, the following:
  - i. The City has the authority without penalty to suspend work in the area of discovery for up to five (5) working days so the artifacts can be properly classified, documented, handled and removed.
  - ii. In the event that human remains are discovered, the Applicant shall secure the Site and contact the Pierce County Medical Examiner, the Puyallup Tribe of Indians, City Historic Preservation Officer, and the State Department of Archaeology and Historic Preservation prior to the removal of any materials. The Medical Examiner shall be requested to minimally disturb in situ remains, only as necessary to complete his preliminary analysis.

- iii. The Applicant shall include in all development contracts a stipulation that any discovery of archaeological or cultural resources shall be kept confidential until such time as release of information (including but not limited to photos or other information posted on social media sites) is approved by the City Historic Preservation Officer.

6. TRAFFIC ENGINEERING

- a. The Development will change intersection movements as they relate to potential safety considerations at the Site's primary (and only) access point via the south leg of the existing signalized intersection of South 19th Street and South Proctor Street. To mitigate an increased risk for collision at the intersection, the City Public Works Engineering Division has determined that:
  - i. The existing southbound approach of South Proctor Street at South 19th Street shall be re-channelized (i.e., striping and signing) to provide for a shared through/left-turn lane and a dedicated right-turn lane. This reconfiguration should be able to be carried out within the existing curb-to-curb width of the roadway. A re-analysis with the new configuration is not necessary since the study's already assumed single lane configuration will yield the most-delayed results, which were deemed acceptable.
  - ii. As a result of the forecasted increase in left-turn traffic volume and conflicting traffic movements therewith, the signal phasing and signal heads are to be replaced to allow for permissive left-turn operations from all approaches via flashing yellow arrow, which is Tacoma's standard for modified/new traffic signals.
  - iii. So as not to encourage through traffic use of the Site access drive, the south leg of the intersection shall be designed to City standards, and in coordination with an overlapping City of Tacoma Public Works capital project, for a driveway rather than a street intersection, while still providing all of the necessary design provisions (geometrically and with respect to signal infrastructure) for accessible pedestrian mobility across the south leg and accessing across South 19th Street.

7. ENVIRONMENTAL HEALTH

- a. A permit for the handling, use, storage or disposal of hazardous wastes is required.
- b. According to the Ecology facility/Site Atlas, the Site is located within the Tacoma Smelter Plume with an area that exceeds 20.0 ppm for arsenic levels. Prior to issuance of a Site Development permit, the Applicant must provide the following:
  - i. Sample the soil and analyze for arsenic and lead following the 2012 Tacoma Smelter Plume Guidance. The soil sampling results shall be sent to the State Department of Ecology ("Ecology") for review. If the Development includes open space areas, contact the Technical Assistance Coordinator, Eva Barber, for assistance in soil sampling methodology within the open space area.
  - ii. If lead or arsenic are found at concentrations above the Model Toxics Control Act ("MTCA") cleanup levels (Chapter 173-340 WAC); the Applicant, owners, potential buyers, construction workers, and others shall be notified of their occurrence. The MTCA cleanup level for arsenic is 20 parts per million (ppm) and lead is 250 ppm.

- iii. If lead, arsenic and/or other contaminants are found at concentrations above MTCA cleanup levels, the Applicant shall:
  - a. Develop a soil remediation plan and enter into the Voluntary Cleanup Program with Ecology. For more information on the Voluntary Cleanup Program, visit Ecology website at: <https://ecology.wa.gov/Spills-Cleanup/Contamination-cleanup/Cleanup-process/Cleanup-options/Voluntary-cleanup-program>.
  - b. Obtain an opinion letter from Ecology stating that the proposed soil remediation plan will likely result in no further action under MTCA. The Applicant shall provide to the local land use permitting agency the opinion letter from Ecology.
  - c. Prior to finalizing site development permits, provide to the local land use permitting agency (the City) a “No Further Action” determination from Ecology indicating that the remediation plans were successfully implemented under MTCA.
  - d. If soils are found to be contaminated with arsenic, lead, or other contaminants, extra precautions shall be taken to avoid escaping dust, soil erosion, and water pollution during grading and Site construction. Site design shall include protective measures to isolate or remove contaminated soils from public spaces, yards, and children’s play areas. Contaminated soils generated during Site construction shall be managed and disposed of in accordance with state and local regulations, including the Solid Waste Handling Standards regulation (Chapter 173-350 WAC).

**ADVISORY COMMENTS:**

Prior to obtaining building or grading permits, the Applicant must contact the appropriate City departments and outside agencies to make the necessary arrangements for all required improvements. The required departmental approvals shall be acquired from, but not necessarily limited to, Planning and Development Services (253-591-5030), Tacoma Power (253-383-2471), Tacoma Water (253-383-2471), and Public Works Department (253-591-5525) the Tacoma-Pierce County Health Department and Washington Department of Ecology.

The following advisory comments will be applicable to required building and development permits associated with the Development:

1. CITY NOISE CODE

Per the City Noise Code, noise levels during construction and when the Hospital is in operation shall not exceed the maximum limits under the City’s Noise Code, TMC 8.122.060 and TMC 8.122.070, or as amended:

- a. No more than 5 dBA above ambient at night (10 pm – 7 am) and 10 dBA above ambient during the day (7 am to 10 pm). – See TMC 8.122.060;
- b. All construction devices used in construction and demolition activity shall be operated with a muffler if a muffler is commonly available for such construction device. – See TMC 8.122.070; and



- c. Construction and demolition activity, excluding emergency work, shall not be performed between the hours of 9:00 p.m. and 7:00 a.m. on weekdays or between the hours of 9:00 p.m. and 9:00 a.m. on weekends and federal holidays, except as otherwise provided in the TMC. *See TMC 8.122.070.*

## 2. PROTECTION OF ADJACENT PROPERTIES

With the Development of the Subject Property, the Applicant/Developer shall be responsible for adverse impacts to other property abutting the Site. The Development shall be designed to mitigate impacts including, but not limited to, discontinuities in grade, abrupt meet lines, access to driveways and garages, and drainage problems. Slopes shall be constructed with cuts no steeper than 1-1/2:1, and fills no steeper than 2:1, except where more restrictive criteria are stipulated by the soils engineer. When encroaching on private property, the project engineer shall be responsible to obtain a construction permit from the property owner. The design shall be such that adverse impacts are limited as much as possible. When they do occur, the project engineer shall address them.

## 3. STORM AND SANITARY SEWERS

- a. The applicant shall review SWMM Minimum Requirements #1-10 and comply with all applicable requirements.
- b. A. Covenant and Easement Agreement shall be required for all projects with private storm drainage systems.
- c. This Development is located within the South Tacoma Groundwater Protection District (“STGPD”). The City of Tacoma Environmental Services Department and Tacoma-Pierce County Health Department (“TPCHD”) developed a guidance document that provides the circumstances and requirements for approval of infiltration facilities for managing pollution-generating stormwater runoff in the STGPD. The policy is available at <http://cms.cityoftacoma.org/enviro/SurfaceWater/signed%202017%20policy%20ESD17-1.pdf>. Additional information on the STGPD is located on the TPCHD website at <https://www.tpchd.org/healthy-places/waste-management/business-pollution-prevention/south-tacoma-groundwater-protection-district>
- d. A site development permit is required.
- e. It appears this Development will disturb one or more acres of land or is part of a larger common plan of development or sale that has disturbed or ultimately will disturb one or more acres of land, and discharge stormwater from the Site. Coverage under a Washington State Department of Ecology NPDES Stormwater Construction General Permit (“CSWGP”) may be required.
- f. Peak daily sanitary flow calculations, prepared by a licensed engineer, shall be submitted to the Science & Engineering Division of Environmental Services. Peak daily flows shall be calculated in accordance with the Washington State Department of Ecology Criteria for Sewage Works Design (Orange Book). Science & Engineering Division staff will then determine if the sewer

system has enough capacity to accommodate the new peak flows in addition to upstream peak flows for fully developed conditions. If the public sewer system does not have enough capacity to accommodate the proposed development, the public sanitary sewer shall be upsized prior to sewer connection.

4. BUILDING CODE

Construction shall comply with the adopted Building Code(s) at the time a building permit application is deemed complete.

5. ENVIRONMENTAL SERVICES – SOLID WASTE

- a. Garbage and recycling in this location as a side load container. This will need to be either a front load or roll of container/compactor. The enclosure will need to meet the minimum requirements. See TMC 12.09.120.
- b. **FRONT-LOAD CONTAINERS** Front-load containers are collected from the front of the truck which has an outside wheel turning radius of approximately 46.5 feet and an inside turning radius of approximately 32.5 feet. This truck is approximately 36 feet long and must line up directly in front of the container.
- c. Enclosures for front-load containers shall have a minimum inside opening width of 12-feet and a minimum inside depth of 10-feet for one container. For two or more containers, a 3-foot clearance between the enclosure wall and container is required as well as a 2-foot clearance between containers. If gated, the gates must swing 180-degrees and must be able to be pinned in the open position. Front-load containers are available in 2-, 3-, 4-, 6- and 8-yard sizes.
- d. **DROP-OFF CONTAINERS/COMPACTORS.** Drop-off containers are collected with a truck that is approximately 32-feet in length and must be able to line up directly in front of the container. Enclosures for drop-off containers shall have a minimum inside opening width of 12-feet and the depth must extend at least 3-feet beyond the end of the container. There must be a minimum 3-foot clearance between the enclosure wall and the container. Drop-off containers are approximately 16 to 18 feet long, 8 feet wide and the height varies with the capacity of the container. If gated, the gates must swing 180-degrees and must be able to be pinned in the open position. The City will also haul privately-owned drop-off or front-load style compactors. The siting of a compactor's location shall be coordinated, and specifically approved by, SWM staff prior to installation. The specific type/size of compactor must be disclosed along with the building plans. The City may require that compactors, which may contain liquids, be equipped with a drain and a connection to a sanitary sewer be provided.

6. PUBLIC WORKS DEPARTMENT - REAL PROPERTY SERVICES

The Easement reserved in SV124.1345/Ord. No. 28314 (E4393), must be shown on the building permit and development plans.

7. Tacoma Fire Department

Construction shall comply with the adopted Fire Code at the time of building permit submittal.

8. TACOMA POWER

- a. Site Notes – This Site will require the wreckout of the existing single phase overhead line running East to West that feeds the existing homes on South Madison Street. These homes will need to be re-fed from a different route, simply relocating poles will not work, this will be a system wreckout and rebuild. 3 phase power is available on the North side of South 19th Street for the Hospital service. The overhead pole line that runs North to South over the Subject Property is a transmission line and is unavailable for secondary power. Significant costs may be required to do this work.
- b. General Notes - Any construction, relocation or adjustment costs shall be at the Applicant's expense. All new electrical services will be installed underground unless otherwise approved by Tacoma Power Engineering; additional utility easements may be required.
- c. Submittal Requirements - Electric Service Application to Tacoma Power New Services Engineering Department. Review the Commercial Project Development Process online to determine additional submittal requirements. Application for Electrical Permit to Tacoma Power Electrical Inspection Department. For services over 400 amps, a set of electrical plans must be submitted to the Electrical Inspection Office for review.
- d. Fees - Fees for new electrical service or upgrading the existing electrical service will be determined when the power requirements are submitted to Tacoma Power New Services Engineering Department. Fees for the electrical permit are based on the electrical contractors bid amount and have not been determined.
- e. The Applicant/Developer must observe the appropriate clearances to Tacoma Power's facilities during construction.
- f. Appropriate clearances must be maintained between all structures and Tacoma Power's facilities. No building shall be constructed under a primary power line. Buildings in the vicinity of the overhead lines must meet WAC, NEC, NESC and Tacoma Power requirements for clearance. Alternatively, the Applicant/Developer shall be responsible for all costs associated with relocating Tacoma Power's facilities in order to obtain the appropriate clearances. Costs of relocation include demolition of existing facilities, construction of new facilities, restoration of property as necessary, and relocation of other utilities as necessary.
- g. Tacoma Power requests to retain all existing easements and facilities in the subject area(s). Alternatively, the Applicant/Developer shall be responsible for all costs associated with relocating Tacoma Power's facilities. Costs of relocation include demolition of existing facilities, construction of new facilities, restoration of property as necessary, and relocation of other



utilities as necessary. The Applicant/Developer shall assist Tacoma Power and other affected utilities in obtaining all necessary easements for said relocated facilities.

- h. The Applicant/Developer shall provide Tacoma Power and other affected utilities with all necessary easements.

9. Tacoma Water

- a. Plans do not show 2" galvanized water main and services in vacated South Proctor Street.
- b. Water main and services of other customers will need to be relocated.
- c. Extension of a permanent water main shall be constructed by private contract. The Applicant/ Developer (of the privately financed project) will be responsible for all costs and expenses incurred by Tacoma Water for preparation of plans and specifications, construction inspection, testing, flushing, sampling of the mains, and other related work necessary to complete the new water main construction to Tacoma Water standards and specifications. The engineering charge for the preparation of plans and specifications will be estimated by Tacoma Water. The Applicant/Developer will be required to pay a deposit in the amount of the estimated cost. The actual costs for the work will be billed against the Applicant/ Developer's deposit. The new mains will be installed by and at the expense of the Applicant/Developer. The Applicant/Developer will be required to provide a 20-foot wide easement over the entire length of the water main, fire hydrant, service laterals and meters. The Applicant/Developer's Professional Land Surveyor shall prepare and submit the legal description of the easement to Tacoma Water for review and processing. Prior to construction, a second deposit in the estimated amount for construction inspection, testing, and sampling will be due to Tacoma Water. Upon completion of the project, the Applicant/Developer will either be refunded the unused amount of the deposit or billed the cost overrun. Approximate design time is ten weeks.
- d. General comments - The existing water services to this Site shall be utilized or retired by Tacoma Water at the Applicant/Developer's expense. If new or modification of existing domestic water services are required, they will be sized and installed by Tacoma Water after payment of the Service Construction Charge, and the Water Main Charge, and the System Development Charge. If new fire service is required, it will be sized by fire consultant and installed by Tacoma Water after payment of the Service Construction Charge.
- e. If a new fire hydrant is required at a location with an existing water main, the hydrant will be installed by Tacoma Water after payment of an installation charge.
- f. If existing water facilities need to be relocated or adjusted due to street improvements for this Development, they will be relocated by Tacoma Water at the Applicant/Developer's expense.
- g. Tacoma Water facilities must remain accessible at all times. Any damage to Tacoma Water facilities will be repaired by Tacoma Water crews at the expense of the Applicant/Developer.
- h. Sanitary sewer mains and side sewers shall maintain a minimum horizontal separation of ten (10) feet from all water mains and water services. When extraordinary circumstances dictate the

minimum horizontal separation is not achievable, the methods of protecting water facilities shall be in accordance with the most current State of Washington, Department of Ecology “Criteria For Sewage Works Design.”

- i. For utilities other than sanitary sewer, the proposed facilities shall have a minimum horizontal separation of five (5) feet and vertical separation of twelve (12) inches from Tacoma Water facilities.

10. ENVIRONMENTAL HEALTH – WASHINGTON DEPARTMENT OF ECOLOGY

The Department of Ecology provided the following advisory comments for the building and development permit construction phase for water quality protection:

- a. Erosion control measures must be in place prior to any clearing, grading, or construction. These control measures must be effective to prevent stormwater runoff from carrying soil and other pollutants into surface water or stormdrains that lead to waters of the state. Sand, silt, clay particles, and soil will damage aquatic habitat and are considered to be pollutants.
- b. Any discharge of sediment-laden runoff or other pollutants to waters of the state is in violation of Chapter 90.48 RCW, Water Pollution Control, and WAC 173-201A, Water Quality Standards for Surface Waters of the State of Washington, and is subject to enforcement action.
- c. The following construction activities require coverage under the Construction Stormwater General Permit:
  - i. Clearing, grading and/or excavation that results in the disturbance of one or more acres **and** discharges stormwater to surface waters of the State; and
  - ii. Clearing, grading and/or excavation on sites smaller than one acre that are part of a larger common plan of development or sale, if the common plan of development or sale will ultimately disturb one acre or more **and** discharge stormwater to surface waters of the State.
    - a) This includes forest practices (including, but not limited to, class IV conversions) that are part of a construction activity that will result in the disturbance of one or more acres, **and** discharge to surface waters of the State; and
- d. Any size construction activity discharging stormwater to waters of the State that Ecology:
  - i. Determines to be a significant contributor of pollutants to waters of the State of Washington.
  - ii. Reasonably expects to cause a violation of any water quality standard.
- e. If there are known soil/ground water contaminants present on-site, additional information (including, but not limited to: temporary erosion and sediment control plans; stormwater pollution prevention plan; list of known contaminants with concentrations and depths found; a

site map depicting the sample location(s); and additional studies/reports regarding contaminant(s)) will be required to be submitted.

11. OPERATIONAL SAFETY CONDITIONS

The following conditions to the Rezone are added after the hearing and as part of this Recommendation of approval by the Hearing Examiner:

- a. Once constructed and operating, the Applicant/Operator shall operate its facility in compliance with all procedures set forth in its answers to questions in Exhibit A-4, as further modified directly below.
- b. In addition to the Conditions of Operation set forth in Exhibit A-4, the Applicant/Operator shall not discharge any patient with unresolved issues that make the patient a potential danger to others into the neighborhood without a specific destination, residence, or other reasonable support system.
- c. The Applicant/Operator shall employ trained security staff and have at least one such security staff present and working at the Hospital on a 24/7, 365 basis.
- d. The Applicant/Operator shall engage in active discussions with TPD and other appropriate City staff in order to include CPTED principles in its design prior to building permit submittal.

12. TIMING OF DEVELOPMENT/ZONING REVERSION

As set forth in Conclusion 4 above, in the event that the Development does not get built within a reasonable time after approval of the Rezone—governed by the effective period of the Applicant’s Certificate of Need, when issued—the zoning for the Subject Property shall revert to C-1 General Neighborhood Commercial District and T Transitional District.

**USUAL CONDITIONS:**

1. The recommendation made herein is based upon representations made and exhibits, including development plans and proposals, submitted at the hearing conducted by the Hearing Examiner. Any substantial change(s) or deviations(s) in such development plans, proposals, or conditions of approval imposed shall be subject to the review and approval of the Hearing Examiner and may require additional hearings.
2. Any approval(s) granted based on the recommendation made herein is/are subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such law, regulations, and ordinances are conditions precedent to the approval granted and are a continuing requirement of such approvals, including once the proposed hospital is constructed and operating (i.e., the hospital must operate in compliance with all applicable laws). By accepting any approvals based on the recommendation made herein, the Applicant represents that the Development and activities authorized will comply with such laws, regulations, and ordinances. If, during the term of any approval granted, the Development and activities permitted do not comply with such laws, regulations, and ordinances, the Applicant shall promptly bring the Development or activities into compliance.



10. Any finding of fact herein which may be more properly deemed or considered a conclusion is hereby adopted as such.

**RECOMMENDATION:**

The Hearing Examiner recommends approval of the rezone, subject to the above listed conditions.

**DATED** this 16th day of August, 2019



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**JEFF H. CAPELL, Hearing Examiner**

## NOTICE

### RECONSIDERATION/APPEAL OF EXAMINER'S RECOMMENDATION

#### RECONSIDERATION:

Any aggrieved person or entity having standing under the ordinance governing the matter, or as otherwise provided by law, may file a motion with the office of the Hearing Examiner requesting reconsideration of a decision or recommendation entered by the Examiner. A motion for reconsideration must be in writing and must set forth the alleged errors of procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14 calendar days of the issuance of the Examiner's decision/recommendation, not counting the day of issuance of the decision/recommendation. If the last day for filing the motion for reconsideration falls on a weekend day or a holiday, the last day for filing shall be the next working day. The requirements set forth herein regarding the time limits for filing of motions for reconsideration and contents of such motions are jurisdictional. Accordingly, motions for reconsideration that are not timely filed with the Office of the Hearing Examiner or do not set forth the alleged errors shall be dismissed by the Examiner. It shall be within the sole discretion of the Examiner to determine whether an opportunity shall be given to other parties for response to a motion for reconsideration. The Examiner, after a review of the matter, shall take such further action as he/she deems appropriate, which may include the issuance of a revised decision/recommendation. (*TMC 1.23.140*).

#### APPEALS TO CITY COUNCIL OF EXAMINER'S RECOMMENDATION:

Within 14 days of the issuance of the Hearing Examiner's final recommendation, any aggrieved person or entity having standing under the ordinance governing such application and feeling that the recommendation of the Examiner is based on errors of procedure, fact or law may appeal the recommendation of the Examiner by filing written notice of appeal with the City Clerk, stating the reasons the Examiner's recommendation was in error.

**Appeals shall be reviewed and acted upon by the City Council in accordance with *TMC 1.70*.**

#### GENERAL PROCEDURES FOR APPEAL:

The Official Code of the City of Tacoma contains certain procedures for appeal, and while not listing all of these procedures here, you should be aware of the following items which may be essential to your appeal. Any answers to questions on the proper procedure for appeal may be found in the City Code sections heretofore cited:

1. The written request for review shall also state where the Examiner's findings or conclusions were in error.
2. Any person who desires a copy of the electronic recording must pay the cost of reproducing the tapes. If a person desires a written transcript, he or she shall arrange for transcription and pay the cost thereof.