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NO. 680455-1

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COURT OF APPEALS, DIVISION I  
STATE OF WASHINGTON

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SLEEPING TIGER, LLC, a Washington limited  
liability company,

Petitioner,

v.

CITY OF TUKWILA, a Washington municipal  
corporation,

Respondent,

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PETITIONER'S BRIEF

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## I. PRELIMINARY CONSIDERATIONS

### A. Introduction and Overview.

Washington's revolutionary, but still controversial, Growth Management Act (the "Act" or the "GMA") fundamentally altered local land use planning decisions by imposing on affected cities and counties goals and requirements which must be incorporated into their comprehensive plans and development regulations. Consequently, local governments' freedom to control development within their borders has been restricted by the Act's provisions; sometimes, as illustrated in this case, affected cities resent the intrusion.

The GMA requires cities to affirmatively promote the creation and development of facilities having regional importance to the public, but which nobody wants in their backyard. The Act characterizes these as "Essential Public Facilities." The Act imposes two fundamental obligations on cities relating to these facilities. First, the city's comprehensive plan must include a process for identifying and "siting" – i.e. locating or accommodating – them. The policies established in comprehensive plans must then be incorporated into development regulations which must be consistent with and implement the plan's principles. Second, the city is prohibited from enacting any

comprehensive plan policy or development regulation which “may preclude” the siting of these facilities.

As required by the Act, in 1991 the City of Tukwila (“Tukwila” or the “City”) amended its Comprehensive Plan to include a process for siting Essential Public Facilities within its borders; contemporaneously, Tukwila also changed its zoning code to include specific provisions governing the location of Essential Public Facilities. Fundamentally, subject to the issuance of an unclassified use permit for a specific use at a particular location, Essential Public Facilities were permitted in Tukwila’s commercial and industrial zoning districts, including specifically the Manufacturing Industrial Center (“MIC”) zone. The unclassified use permit process provides the City a degree of regulatory control over a proposed facility through the imposition of conditions and/or mitigating measures.

In 2009 King County issued a Request for Proposal (“RFP”) soliciting bids from qualified operators to establish “Crisis Diversion Facilities” in southern King County, the funding for which was provided through a .1% increase in the sales tax approved by voters as part of a countywide mental health initiative. Crisis Diversion Facilities are a type of Essential Public Facility entitled to special protection under the GMA. These facilities provide a physical location for police (and other “first

responders”) to transport individuals suffering from mental health and chemical dependency problems, as an alternative to incarceration or hospitalization.

Sleeping Tiger, LLC (“Sleeping Tiger”) owns an old hotel in Tukwila which the Downtown Emergency Service Center (“DESC”) and two other potential bidders had identified as an ideal location for Crisis Diversion Facilities. Such a use for this property, which is located in Tukwila’s MIC zone, was permitted at the time subject to the issuance of an unclassified use permit. Sleeping Tiger and DESC, as well as the other bidders, communicated to Tukwila their serious interest in locating Crisis Diversion Facilities at Sleeping Tiger’s hotel. DESC ultimately was awarded the contract for the three phases of the Crisis Diversion Facilities envisioned by King County’s RFP.

Rather than processing an application for an unclassified use permit – as required by its Comprehensive Plan and as specifically permitted by its zoning regulations – Tukwila imposed a moratorium prohibiting the submission of all land use permit applications relating to Crisis Diversion Facilities. Following eight months of study and evaluation, Tukwila thereafter amended its zoning code to limit the permitted location of Crisis Diversion Facilities to a small portion of its

CL/I zone along the West Valley Highway, thereby excluding their siting at Sleeping Tiger's property in the MIC zone as previously allowed.

Sleeping Tiger challenged the zoning amendment, Ordinance 2287, to the Central Puget Sound Growth Management Hearings Board (the "Board"), a quasi-judicial agency created under the Act for the purpose of determining compliance with its goals and adjudicating disputes relating to the application of its provisions. Although DESC had independently filed petitions with the Board questioning the validity of the moratorium, it subsequently withdrew them due to Tukwila's unfavorable reception after it had located an alternative site within the City of Seattle. DESC continues to be embroiled in litigation with the neighbors in this location who are opposed to locating it within their community.

On January 4, 2011, the Board issued a Final Decision and Order (the "Order") which both concluded that Tukwila's Ordinance 2287 was in violation of the Act and invalidated it because its continued existence was determined to be inconsistent with the Act's fundamental goals. In issuing its Order the Board specifically found that Ordinance 2287 was inconsistent with and failed to implement Tukwila's Comprehensive Plan's policies relative to the siting of an Essential Public Facility and it precluded the location of such a facility. (A copy of the Order is attached hereto as Appendix A for convenient reference). Tukwila appealed the

Board's Order to the superior court of King County. On December 8, 2011, the superior court entered Conclusions of Law, Order and Judgment which reversed and set aside the Board's Order. Sleeping Tiger thereafter filed this appeal for the purpose of requesting the Court to reinstate the Board's Order. This Court reviews the Board's decision on a *de novo* basis based on the record before it, not the decision of the superior court; Tukwila, the party challenging the Board's Order, bears the burden of proving its invalidity.

## **B. Washington's Growth Management Act.**

### **1. Perspective of the Growth Management Act.**

Prior to the GMA's adoption local governments in Washington regulated and controlled land use decisions within their borders subject only to restrictions imposed by constitutional protections and with little oversight by the state. "This relaxed approach to land use planning changed in 1990 with enactment of the GMA. The GMA was a legislative response to fears concerning the impacts of rapid population growth in Washington, and particularly the Puget Sound region. The GMA establishes an ambitious land use planning system requiring more rapidly growing and populous counties, cities and towns to develop land use plans, development regulations and project review procedures consistent with GMA goals and requirements." *24 Washington Practice Series:*

*Environmental Law and Practice (Second Edition)* §18.1. The Act articulates thirteen broad planning goals and objectives, such as the concentration of growth in urban areas, the reduction of urban sprawl, coordination of regional transportation systems, promotion of economic development, protection of private property rights and protection of the environment. Significantly, the GMA's "goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan" under the Act. RCW 36.70A.020.

The most fundamental responsibility imposed by the GMA is the requirement for city's to develop and adopt comprehensive plans which both address a variety of specific land use planning problems and satisfy a series of procedural and substantive standards. RCW 36.70A.070.

Washington's Supreme Court recently described the purpose of a comprehensive plan under the Act as a document "which sets out the generalized coordinated land use policy statement of the [city's or] county's governing body. In essence, the comprehensive plan is the central nervous system of the GMA. It receives and processes all relevant information and sends policy signals to shape public and private behavior." *Woods v. Kittitas County*, 162 Wn.2d 597, 608 (2007) (internal citations omitted). "The GMA has infused comprehensive plans with

potency previously unknown in Washington. The plan must contain data and detailed policies to guide the expansion and extension of public facilities and the use and development of land, as prescribed by the Act.” Settle, Richard L., *Washington’s Growth Management Revolution Goes to Court*, 23 Seattle U. L. Rev. 5, 26 (1999) (hereinafter “*Settle, Growth Management Revolution*”).

All development regulations adopted by affected cities, principally zoning and other land use controls, must be consistent with and implement the policies established in their comprehensive plans. RCW 36.70A.040(3)(d); WAC 365-196-550(5)(a). A frequently cited decision by the Board, *Children’s Alliance v. City of Bellevue*, CPSGMHB Case No. 95-3-0011, Final Decision and Order dated July 25, 1995 at 20, summarized the relationship under the GMA between comprehensive plans and their implementing development regulations as follows:

The Board agrees that prior to the enactment of the GMA, a comprehensive plan was merely a “statement” of policy, and a city was free to ignore its own comprehensive plan when formulating development regulations. This is no longer the case under the GMA since the legislature, in the interests of accountability and predictability, inserted language requiring consistency between comprehensive plans and development regulations. In *Snoqualmie v. King County* the Board stated, “[u]nder the GMA, the very nature of policy documents has changed. Policy statements, in . . . comprehensive plans are now substantive and directive.” A city retains discretion in deciding how exactly to implement its comprehensive plan

through development regulations, but this discretion has its legal and practical limits. Where, as here, a city exercises its discretion to the point that its development regulations fail to implement and are inconsistent with its Comprehensive Plan, it has exceeded these limits.

(internal citations omitted).

## **2. Essential Public Facilities Under the Growth Management Act.**

The Act's goals are implemented through five core substantive mandates, significantly for purposes of this proceeding including a directive that local governments must assume regional responsibility for accommodating facilities that are deemed essential to the common good, "but their local siting traditionally has been thwarted by exclusionary land use policies, regulations, or practices. For this reason, [the Act] has, in effect, preempted such behavior." *Settle, Growth Management Revolution* at 21. The Act designates these as being ***Essential Public Facilities***, which it defines as facilities necessary for regional harmony, but which are "typically difficult to site, such as airports, state education facilities and state or regional transportation facilities, . . . state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, group homes, and

secure community transition facilities.” RCW 36.70A.200(1).<sup>1</sup> As long as necessary services are being provided for the public good, they can be privately owned and operated. WAC 365-196-550(1)(b).

Specifically, the Act imposes on a city two substantive duties relating to Essential Public Facilities: (i) under RCW 36.70A.200(1) its comprehensive plan “shall include a process for identifying and siting essential public facilities”; and (ii) under RCW 36.70A.200(5) “[n]o local comprehensive plan or development regulation may preclude the siting of essential public facilities.” The Act further requires local jurisdictions to enact such development regulations, which must be consistent with their comprehensive plans, as may be necessary to carry out the plan’s policies relative to the siting of Essential Public Facilities. RCW 36.70A.040(3)(d).

### **3. Enforcement of the Growth Management Act’s Goals and Requirements.**

In contrast with the growth management system adopted in Oregon, which is based on a “top down” approach controlled by centralized statewide enforcement by a single governmental agency,

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<sup>1</sup> In its Comprehensive Plan Tukwila similarly defines Essential Public Facilities as “facilities which provide basic public services, provided in one of the following manners: directly by a government agency, by a private entity substantially funded or contracted for by a government agency, or provided by a private entity subject to public service obligations. . . .” Policy 15.2.2 Tukwila Comprehensive Plan.

Washington adopted a dispersed “bottom up” approach. As a result, “[i]n Washington, the duty to ensure that local legislative actions are compliant with the GMA falls upon members of the public who can establish standing as petitioners to quasi-adjudicative agencies called “growth management hearings boards””. McGee, Henry W., Jr., *Washington’s Way: Dispersed Enforcement of Growth Management Controls and the Crucial Role of NGOs*, 31 Seattle U. L. Rev. 1, 5 (2007) (hereinafter “*McGee, Dispersed Enforcement of GMA Controls*”). For purposes of adjudicating disputes related to the compliance with the Act, the GMA created three regional growth management hearings boards, each staffed by three members qualified by experience and training in matters pertaining to land use planning and residing within the jurisdictional boundaries of the applicable board. RCW 36.70A.260(1). The Board’s primary mission is to determine whether comprehensive plans and development regulations are in compliance with the GMA or interfere with the achievement of its stated goals and standards. The Central Puget Sound Growth Management Hearings Board has jurisdiction over the Puget Sound region.

## **II. ISSUES PRESENTED FOR REVIEW**

***Can the City of Tukwila satisfy its burden of proving that the Central Puget Sound Growth Management Hearings Board’s Final***

***Decision and Order dated January 4, 2011, in Sleeping Tiger, LLC v. City of Tukwila, Case No. 10-3-0008, was based on the Board's erroneous interpretation or application of Washington's Growth Management Act or was not supported by substantial evidence?*** In answering this question the Court must consider and decide three underlying issues relating to Tukwila's enactment of Ordinance 2287:

1. In changing its zoning ordinances, in response to an applicant/sponsor's specific confirmation that it intended to locate an Essential Public Facility as permitted before the amendment, did Tukwila violate RCW 36.70A.040(3)(d) by establishing a process for siting an Essential Public Facility which was inconsistent with and failed to implement Tukwila's Comprehensive Plan's policy "assuring" that such facilities will be located where necessary?
2. In changing its zoning ordinances, in response to an applicant/sponsor's specific confirmation that it intended to locate an Essential Public Facility as permitted before the amendment, did Tukwila preclude the siting of an Essential Public Facility in violation of RCW 36.70A.200(5) when it limited the location of such facilities to a small segment of a single commercial zoning district?

3. Did Tukwila's abandonment of its siting process for Essential Public Facilities, as established in development regulations adopted in accordance with its Comprehensive Plan's policies, followed by the adoption of a substitute siting process, create an untimely, unfair and unpredictable government permit process prohibited by RCW 36.70A.020(7)?

### **III. STATEMENT OF THE CASE**

#### **A. King County's Crisis Diversion Facilities.**

In 2007 voters approved the collection of an additional .1% sales tax, applicable for a period of ten years, to fund King County's Mental Illness and Drug Dependency Initiative (the "MIDD"), the primary objective of which was to "[p]revent and reduce chronic homelessness and unnecessary involvement in the criminal justice and emergency medical systems and promote recovery for persons with disabling mental illness and chemical dependency by implementing a full continuum of treatment, housing, and case management services." CP 554. King County's MIDD plan established five fundamental policy goals, including a reduction in the number of mentally ill and chemically dependent people using costly facilities like jails and hospitals, and a reduction in the number of people who cycle through the criminal justice system, returning repeatedly for treatment as a result of their mental illness or chemical dependency. This

goal was primarily implemented through the plan to create a Crisis Diversion Facility, a new facility funded by the County “identified by numerous stakeholders as one of the most important components of the plan.” CP 524-535.

A Crisis Diversion Facility is actually three linked programs implementing the MIDD. As summarized in a report by the MIDD Oversight Committee: “The linked programs are a Crisis Diversion Facility (CDF) where police and other first responders may refer adults in crisis for evaluation and referral to appropriate community based services, a Crisis Diversion Interim Services Facility (CDIS) which will serve as a place where people leaving the CDF who are homeless may receive up to two weeks of further stabilization and linkage to housing services, and a Mobile Crisis Team that will respond to police to provide on-site evaluation and crisis resolution as well as linkage to the CDF.” CP 1181. The combined facilities – which ideally will be co-located, operated on a 24/7 basis and staffed by 80-100 professional, administrative and support personnel – will provide a full range of necessary services, including safe and secure housing, three meals per day, case evaluation and management, counseling, medication management and transportation assistance. CP 220.

It is undisputed that Crisis Diversion Facilities, as described in King County's RFP, qualify as Essential Public Facilities under the GMA.

**B. The Parties and the Property.**

Sleeping Tiger owns a 118-room hotel located on Tukwila International Boulevard which it has operated since early 2008 as RiverSide Residences. RiverSide offers all the facilities and amenities generally associated with a residential hotel, such as furnished rooms with private baths, a lobby, commercial kitchen, dining rooms, meeting rooms, laundry facilities and a 4,500 square foot conference center. RiverSide's units are generally leased on a month-to-month basis to lower income tenants with all furniture, services and utilities included in the rental payments. CP 217. Thirty-five of its units have been master-leased since 2009 to DESC, a respected non-profit that provides housing and support services to individuals in King County who have experienced homelessness caused primarily by chronic mental illness, alcohol abuse or drug dependency. DESC, in turn, "sublets" these units to its clientele who are required to pay a portion of the rent from their own resources. CP 217.

Based on DESC's relationship with Sleeping Tiger and its knowledge of the facilities available at its hotel, in June 2009 DESC approached Sleeping Tiger to determine whether it would agree, subject to terms and conditions to be negotiated, to significantly expand its presence

at RiverSide by incorporating operations for Crisis Diversion Facilities. These facilities, DESC explained, were intended to be located somewhere in southern King County and funded by King County through a program DESC was instrumental in developing. DESC planned to submit a proposal to operate and manage these facilities, housed at the RiverSide property, in response to a Request for Proposal (“RFP”) which was anticipated to be issued by King County. CP 218. Ultimately, DESC was selected by King County as the approved provider for the three phases of the Crisis Diversion Facilities envisioned by the RFP. CP 220.

**C. Tukwila’s Moratorium and Crisis Diversion Facilities Ordinance.**

Tukwila had been advised in the second quarter of 2009 by both DESC and Sleeping Tiger of DESC’s serious interest in locating Crisis Diversion Facilities at Sleeping Tiger’s RiverSide property.<sup>2</sup> CP 218.

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<sup>2</sup> Tukwila has suggested that the City was completely unaware of King County’s interest in sponsoring Crisis Diversion Facilities, particularly relating to the possibility that Tukwila could potentially be selected as a location for the facility. The City has asserted that it for the first time heard of Crisis Diversion Facilities in September 2009 when it received inquiries from certain potential bidders interested in responding to King County’s RFP. The facts simply do not support such a position. For example, on June 11, 2009, Tukwila’s Director of Community Development, Jack Pace, received an e-mail from Pioneer Human Services, a prospective bidder on the RFP, requesting a meeting for the specific purpose of “discuss[ing] the feasibility of siting this project on the Riverside Residences property.” CP 265. In a letter dated November 13, 2009, from Tukwila’s Mayor to King County, Tukwila further confirmed that in March 2009 its police chief “contacted Amnon Shoenfeld with the MIDD because the Chief had learned that Tukwila was the proposed location of the crisis diversion facility.” CP 372. In addition, both DESC and Sleeping Tiger previously had separate meetings with Tukwila at which their interest in locating Crisis Diversion Facilities at the Riverside property was specifically discussed. CP 174; 220.

Located in Tukwila's Manufacturing/Industrial Center ("MIC") zone, Crisis Diversion Facilities were specifically permitted at Sleeping Tiger's property as an Essential Public Facility, subject to the issuance of an unclassified use permit. TMC 18.38.050(5). However, shortly before the bid date for the RFP, Tukwila enacted Ordinance 2248 which imposed a 6-month moratorium (which was subsequently extended) prohibiting "the receipt and processing of building permit applications, land use applications, and any other permit applications for diversion facilities and diversion interim service facilities." CP 269-271. Although Sleeping Tiger never challenged the moratorium (including extensions), DESC filed a Petition for Review with the Board which contended that the moratorium violated the GMA.

With the moratorium in place, Tukwila's planning staff, purportedly in order to facilitate the siting of Crisis Diversion Facilities, conducted an extensive review of the City's zoning districts to determine what it deemed the perfect location for them. CP 441-459. Despite the strenuous urgings of both DESC and Sleeping Tiger, including both direct meetings and oral testimony and written comments at public hearings, Tukwila refused to consider continuing to allow Crisis Diversion Facilities in the MIC zone at the property already selected by the proponent. Thereafter, on May 17, 2010, Tukwila's City Council enacted Ordinance

2287 which essentially adopted the staff's recommendation restricting the location of Crisis Diversion Facilities in Tukwila to a 1.5 mile section in the City's Commercial/Light Industrial Zone along West Valley Highway, south of Strander Boulevard. CP 422.

Other than the geographical limitations imposed on Crisis Diversion Facilities, which still required the proponent to obtain an unclassified use permit, no other restrictions, regulations or conditions relating to Crisis Diversion Facilities were enacted by Tukwila; none were even considered by the City at any point during the legislative process. Sleeping Tiger responded by filing a Petition for Review with the Board challenging the enactment of Ordinance 2287 as being noncompliant with the GMA's goals and requirements. CP 85-93.

**D. The Growth Management Hearings Board's Final Decision and Order.**

On January 4, 2011, the Board entered a Final Decision and Order in *Sleeping Tiger v. City of Tukwila*. CP 1232-1260. The Board specifically determined that Sleeping Tiger had carried its burden of proving that Tukwila's adoption of Ordinance 2287 was clearly erroneous and in violation of the GMA for three separate and distinct, although somewhat interrelated, reasons: (i) based on the application of RCW 36.70A.200(1) and 36.70A.040(3)(d), Tukwila's enactment of the

ordinance was found to be inconsistent with its Comprehensive Plan policies regarding the accommodation of Essential Public Facilities and did not comply with the GMA's mandate for the plan to include a "process for identifying and siting essential public facilities" which would be implemented through consistent development regulations; (ii) the ordinance was noncompliant with RCW 36.70A.200(5) because it "precluded DESC from locating crisis diversion facilities on its chosen site or within the City of Tukwila."; and (iii) in abandoning the process already established in its development regulations to govern the siting of Essential Public Facilities, Tukwila violated RCW 36.70A.020(7) because the resulting permitting process was untimely, unfair and/or unpredictable.

As a remedy, the Board remanded Ordinance 2287 to Tukwila in order for it "to take legislative action necessary to comply with the requirements of the GMA." CP 1258; Order at 27. In addition, after affirmatively finding that "[t]he continued validity of Ordinance 2287 substantially interferes with the fulfillment of GMA Goal 7 – RCW 36.70A.020(7)", the Board proceeded to invalidate the ordinance in accordance with the requirements of RCW 36.70A.302(1). CP 1257; Order at 26.

**E. Review by King County Superior Court.**

The City of Tukwila thereafter filed a Petition for Review with the Superior Court of King County requesting it, as an appellate tribunal, to reverse and vacate the Board's Order. On December 8, 2011, the Superior Court entered Conclusions of Law, Order and Judgment which reversed and set aside the Board's Order. After the Superior Court denied Sleeping Tiger's Motion for Reconsideration, Sleeping Tiger immediately filed an appeal with this Court.

#### **IV. LEGAL ARGUMENTS AND ANALYSIS**

##### **A. The Standard of Judicial Review.**

This is an appeal from a final decision of the superior court which reversed and set aside the Board's Order. "On appeal, this court reviews the Board's decision, not the decision of the superior court, and judicial review of the Board's decision is based on the record made before the Board. [This court applies] the standards of RCW 34.05 directly to the record before the agency, sitting in the same position as the superior court." *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 553 (2000) (internal quotations and citations omitted). RCW 34.05.570(3) provides (to the extent relevant to this proceeding) that "the court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(c) The agency has engaged in unlawful procedure or decision making process . . . ;

(d) The agency has erroneously interpreted or applied the law; [or]

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court . . .”

Tukwila, the party challenging the Board’s Order, bears the burden of demonstrating its invalidity. RCW 34.05.570(1)(a); *King County, supra* at 552-3. The Court reviews the Board’s conclusions of law *de novo*; although not bound by an agency’s determinations, the Court should appropriately give “substantial weight to the Board’s interpretations of the statute it administers.” *Id.* “Where an administrative agency is charged with administering a special field of law and endowed with quasi-judicial functions because of its expertise in that field, the agency’s construction of statutory words and phrases and legislative intent should be accorded substantial weight when undergoing judicial review.” *Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d 38, 46 (1998) (quoting *Overton v. Washington State Economic Assistance Authority*, 96 Wn.2d 552, 555 (1981)).

**B. As Correctly Determined by the Board, Tukwila’s Ordinance 2287 Was Inconsistent With and Failed to Implement the Process Established in Its Comprehensive Plan for Siting an Essential Public Facility.**

**1. Initially, Tukwila Complied With the Act’s Requirements for Accommodating Essential Public Facilities.**

The Act affirmatively requires local governments to accommodate facilities of regional importance, the location of which have historically been frustrated in many instances by neighborhood and community opposition. Such “Essential Public Facilities” include transportation and solid waste disposal facilities and “in-patient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities.” RCW 36.70A.200(1). Crisis Diversion Facilities involved in this proceeding, which can be privately owned and operated, unquestionably qualify for special protection under the GMA as a type of an Essential Public Facility. WAC 365-196-550(1)(b).

RCW 36.70A.200(1) requires the comprehensive plan of each city to “include a process for identifying and siting essential public facilities.” The obvious purpose of this provision is to require a city to establish in its comprehensive plan the rules of the game for locating unpopular but essential facilities within its borders, communicating to potential applicants where they can be located and under what conditions. Through the Act’s insistence on the establishment of a clearly defined and predictable process for siting such facilities, their availability to serve the public good will be assured, while discouraging arbitrary, *ad hoc* decision-

making formulated on a case-by-case basis, typically in response to neighborhood or community hostility directed at the undesirable facility.

In accordance with the GMA's mandate, in 1991 Tukwila incorporated into its Comprehensive Plan the following policies applicable to the location of an Essential Public Facility within the City:

15.2.1 In reviewing proposals to site new or expanded essential public facilities within the City, Tukwila shall consider accepting its regional share of facilities which provide essential services, provided other communities accept their share as well, provided the funding of regional facilities sited in Tukwila relies on an equitable regional source of funding, and provided the siting of all essential public facilities is based on sound land use planning principles and is developed through working relationships with affected neighborhoods, special purpose districts, ports and other agencies which serve the Tukwila community.

15.2.2 "Essential public services" are facilities which \ provide basic public services, provided in one of the following manners: directly by a government agency, by a private entity substantially funded or contracted for by a government agency, or provided by a private entity subject to public service obligations (i.e., private utility companies which have a franchise or other legal obligation to provide service within a defined service area).

15.2.3 ***Applications for essential public facilities will be processed through the unclassified use permit process established in the City's development regulations. This process shall assure that such facilities are located where necessary and that they are conditioned as appropriate to mitigate their impacts on the community.***

(emphasis added).

Fulfilling its GMA obligations, Tukwila's Comprehensive Plan, characterized by the Supreme Court as being the "central nervous system of the GMA", requires its zoning ordinances to provide a process which "shall assure that such facilities are located where necessary." This process, as specifically indicated in Policy 15.2.3, will be contained in "the unclassified use permit process established in the City's development regulations." All applications for locating such necessary facilities in Tukwila "will be processed" through an unclassified use permit application.<sup>3</sup> The unclassified use permit process enables Tukwila to both evaluate the objectionable aspects of the specific facility in question and impose appropriate conditions and mitigating measures regulating the particular use under consideration.<sup>4</sup>

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<sup>3</sup> Unclassified use permits in Tukwila, a Type V Permit, require both neighborhood and community meetings as well as public hearings before Tukwila's City Council. An applicant for an unclassified use permit must submit for the City's consideration a comprehensive description of the facility and its operations. After completing public hearings, Tukwila can either impose conditions and restrictions on the issuance of the permit or demand mitigating measures appropriate in order to reduce the facility's adverse impacts on the community. TMC 18.66.010, *et seq.*

<sup>4</sup> The Act's administrative regulations adopted by the Department of Commerce further confirm that: "The siting process may not be used to deny the approval of the essential public facility. The purpose of the essential public facility siting process is to allow a county or city to impose reasonable conditions on an essential public facility necessary to mitigate the impacts of the project while ensuring that its development regulations do not preclude the siting of an essential public facility." WAC 365-196-550(6)(a).

The guiding principles established in Tukwila's Comprehensive Plan are meaningless, of course, unless and until they are incorporated into enabling legislation. The Act specifically requires local governments to enact ordinances governing the siting of Essential Public Facilities which are necessary and proper to translate its Plan's policies into land use actions. RCW 36.70A.040(3)(d). Accordingly, the Supreme Court recently emphasized that "[a]long with a comprehensive plan, the GMA requires [cities and] counties to adopt development regulations that are consistent with and implement the comprehensive plan . . . Such regulations must be consistent with the comprehensive plan and be sufficient in scope to carry out the goals set forth in the comprehensive plan." *Woods v. Kittitas County*, supra at 609-13.<sup>5</sup>

As required by the Act and envisioned in Policy 15.2.3 of its Comprehensive Plan, Tukwila established through implementing zoning regulations the requisite provisions for locating Essential Public Facilities in the City. Subject to the issuance of an unclassified use permit, Essential Public Facilities were specifically permitted in Tukwila's

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<sup>5</sup> The administrative regulations promulgated under the GMA similarly confirm that: "Implement" in this context has a more affirmative meaning than merely "consistent" . . . "Implement" connotes not only lack of conflict but also a sufficient scope to fully carry out the goals, policies, standards and directions contained in the comprehensive plan." WAC 365-196-800(1).

commercial/industrial zones.<sup>6</sup> The Board in its Order approvingly characterized the City’s implementation of its Comprehensive Plan as “present[ing] a coherent program for EPF siting. Certain named EPFs are specifically allowed in designated zones, sometimes as conditional or unclassified uses . . . Any EPF not specifically named as allowed in a designated zone is permitted as an unclassified use in MIC and any of seven other zones. Essential public facilities, except those listed separately in any of the districts established by this title, are allowed as unclassified uses in the eight zones. *This scheme provides flexibility for project proponents to find appropriate sites for unique services and for the City to appropriately condition applications for previously unidentified EPFs anywhere in these eight non-residential zones.*” CP 1243; Order at 12 (emphasis added; internal quotations omitted). The Board implicitly concluded that Tukwila’s “regulatory scheme” for siting Essential Public Facilities was in harmony with and effectively carried out its Comprehensive Plan’s principles relative to the siting of such facilities, “assur[ing] that such facilities are located where necessary.”

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<sup>6</sup> Unspecified Essential Public Facilities were allowed in the following industrial/commercial zoning districts in Tukwila: Tukwila Urban Center (TMC 18.28.050(2)); Commercial Light Industrial (TMC 18.30.050(3)); Light Industrial (TMC 18.32.050(5)); Heavy Industrial (TMC 18.34.050(5)); Manufacturing Industrial Center (TMC 18.35.050(3) and TMC 18.38.050(5)); Tukwila Valley South (TMC 18.40.050(4)); and Tukwila South Overlay (TMC 18.41.050(3)).

**2. Anticipating the Receipt of an Application for an Unclassified Use Permit for Crisis Diversion Facilities, Tukwila Abandoned the Process Established for Siting an Essential Public Facility, Imposed a Moratorium and Enacted a Restrictive Zoning Ordinance.**

The regulatory structure Tukwila created for siting Essential Public Facilities sure looked good on paper. It established a predictable process for accommodating such facilities, regulating the particular use and allowing the City to impose mitigating measures through its unclassified use permit process. Interested proponents such as DESC could readily ascertain the areas in which such facilities were allowed, including the MIC zone where Sleeping Tiger’s hotel was located. Policy 15.2.3 of Tukwila’s Comprehensive Plan further reassured DESC that “[a]pplications for essential public facilities ***will be processed through the unclassified use permit process*** established in the City’s development regulations”, a process in place at the time for almost twenty years. (emphasis added).

***However***, when confronted with DESC’s real-life application for Crisis Diversion Facilities, Tukwila refused to accept for processing DESC’s unclassified use permit application, despite its Comprehensive Plan’s assurance that such applications will be processed through this procedure. Instead, Tukwila: (i) declared the existence of a “public emergency” and imposed “a moratorium upon the receipt and processing

of building permit applications, land use applications, and any other permit applications for diversion facilities and diversion interim services facilities”; and (ii) following eight months of study, enacted Ordinance 2287 which restricted the potential location of Crisis Diversion Facilities to a small portion of the C/LI zone along West Valley Highway, south of Strander Boulevard. The Board easily and unanimously concluded that Ordinance 2287 was not in compliance with Tukwila’s obligations under the Act based on the following analysis:

The Board can readily see what would happen if such a process were found to comply with the GMA requirement for identifying and siting EPFs. Any local jurisdiction, upon information that a previously-unidentified essential public facility was likely to locate in its boundaries, could declare a moratorium on project applications and undertake restrictive zoning to ensure that the selected site was no longer available. Such a process would soon undermine the GMA requirement not to preclude the siting of essential public facilities. Broadly applied across the state, the GMA goal of providing services to meet essential public needs would be frustrated and the public would not be well served.

CP 1246; Order at 15.

It would appear to be self-evident that a “process” which is abandoned and changed after an applicant expresses an interest in using it, in reality, is not a process at all; rather, it represents nothing more than window-dressing cosmetically put in place by Tukwila to create the

illusion that it had complied with the GMA, only to be disregarded in favor of an *ad hoc*, case-by-case review which afforded the City complete freedom to locate the facilities wherever it wanted, subject to any conditions it wanted to impose and delayed and discouraged for whatever period of time it may take the City to study and review the particular use in question. Such a “process” clearly bears no resemblance to the predictable and definitive mechanism required by the GMA to be in place in order to facilitate the location of Essential Public Facilities.

More fundamentally, such a process cannot possibly be reconciled with Tukwila’s Comprehensive Plan’s policy requiring that the unclassified use permit process established in its zoning regulations “*shall assure* that such facilities are located where necessary.” (emphasis added). Because its zoning regulations must be consistent with and contain “a sufficient scope to fully carry out the goals, policies, standards, and directions contained in the comprehensive plan”, the Board proceeded to invalidate Ordinance 2287 after finding that it was not in compliance with the GMA. *Woods v. Kittitas County, supra* at 609-13; WAC 365-195-800(1). The Board essentially concluded that the ordinance frustrated rather than facilitated the policies clearly established in Tukwila’s Comprehensive Plan, a conclusion which appears to be unassailable.

### **3. The Language in Ordinance 2287 Confirms that Tukwila**

**Failed to Comply with the GMA's Siting Requirements for Essential Public Facilities.**

Any doubt about Tukwila's compliance with the GMA is resolved, actually obliterated, by the language in Ordinance 2287 itself. In the tenth of forty-nine "whereas" clauses included in the ordinance's preamble, inserted to provide the contextual background and justification for its enactment, Tukwila clearly admits that the moratorium was imposed "in order to allow City staff time to study the County's proposed plans *and develop a process for siting these facilities within the City.*" CP 403. (emphasis added). The *ad hoc* siting process formulated by Tukwila was incorporated into Ordinance 2287; yet, RCW 36.70A.200(1) expressly required the siting process to be established up-front in the City's Comprehensive Plan and implemented in its zoning regulations – which Tukwila did twenty years ago.

If the legislature never adopted the GMA, Tukwila's enactment of Ordinance 2287 would have been unassailable as the legitimate exercise of its zoning powers. However, the GMA was a game-changer in the restrictions it imposed on Tukwila's land use planning actions relating to the accommodation of regionally significant but frequently undesirable Essential Public Facilities. In 1991 Tukwila amended its Comprehensive Plan to include the GMA-mandated process for siting Essential Public

Facilities; again as required by the Act, this siting process was contemporaneously legislated into Tukwila's zoning regulations which must "assure that such facilities are located where necessary." However, instead of processing DESC's application for an unclassified use permit, as specifically allowed by its GMA-compliant zoning regulations, Tukwila elected to study the particular use for eight months while its moratorium was in effect and then, as explicitly indicated in Ordinance 2287, thereafter "develop a process for siting these facilities within the City."

Tukwila's flexibility to study Crisis Diversion Facilities and develop an individualized siting process was eliminated with the adoption of the GMA. Tukwila's actions in this regard, adopted in reaction to an applicant's request to site the facilities in the City, were diametrically opposed to the Act's goals of encouraging predictability and transparency in order to facilitate the location of such facilities. Both the GMA and Tukwila's own Comprehensive Plan obligated it to process DESC's unclassified use permit, imposing such conditions and mitigating measures as appropriate to protect the community against any adverse impacts. Although Tukwila presumably had the freedom to modify its development regulations, any amendment must necessarily implement the siting process contained in its Comprehensive Plan and not preclude the siting of an Essential Public Facility. In this case Ordinance 2287 did neither.

**C. In Addition to Potentially Precluding the Siting of an Essential Public Facility, Ordinance 2287 Actually Precluded Its Development.**

In order to evaluate Ordinance 2287's preclusive effect, attention should initially be focused on its concentrated nature and singular application. As indicated above, Crisis Diversion Facilities are a unique public facility which are intended to serve all of King County; once such a facility is located, it will not be duplicated elsewhere in the county.

Although King County's RFP sought proposals from qualified applicants to generally locate these facilities in southern King County, the facility's actual location was to be selected by the applicants.<sup>7</sup> CP 251. DESC, as well as two other bidders, contacted Tukwila about locating Crisis Diversion Facilities at Sleeping Tiger's hotel; no evidence exists that *any* location elsewhere in the City was ever considered by any potential

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<sup>7</sup> Although King County's RFP outlined with specificity the requirements and parameters for its Crisis Diversion Facilities program, its actual location was to be determined by the responsive bidders. CP 251. After DESC expressed a serious interest in locating the facilities at RiverSide, Tukwila's staff, allegedly "[i]n order to facilitate the siting of these facilities" embarked on an elaborate adventure to determine exactly where Crisis Diversion Facilities could best be located. CP 273-291. Tukwila's argument that it did not "target" Sleeping Tiger's RiverSide property is simply disingenuous. As the record clearly demonstrates, the RiverSide location, which was considered by DESC and two other bidders, was the only location in Tukwila ever considered for siting Crisis Diversion Facilities. But for the expressed interest as a site for Crisis Diversion Facilities, there would have been no need for the moratorium and Ordinance 2287 to have been adopted.

applicant.<sup>8</sup> If Sleeping Tiger's property had not been proposed as the preferred location for the facility, Tukwila would have had no need to consider adopting an ordinance which changed or otherwise regulated Tukwila's siting process for Crisis Diversion Facilities.

Ordinance 2287 was not a general development regulation; rather, it represented a single-purpose legislative enactment exclusively directed at limiting the potential locations of Crisis Diversion Facilities to a small segment of Tukwila's C/LI zoning district. Although Tukwila's moratorium was purportedly imposed to provide the City breathing room to "carefully and thoroughly plan for and provide appropriate development regulations" applicable to Crisis Diversion Facilities, in reality Tukwila never even considered the adoption of any measures to regulate the facilities; the only subject considered was restricting their location to an undesirable zoning district which included few buildings to accommodate the use, thereby diverting them from the zoning district already identified by three potential applicants. The targeted nature of Ordinance 2287, formulated after Tukwila had actual knowledge that a preferred location in

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<sup>8</sup> On June 11, 2009, Tukwila received an e-mail from Pioneer Human Services requesting a meeting for the specific purpose of "discuss[ing] the feasibility of siting this project on the Riverside Residences property." CP 265. Another prospective bidder, Navos Healthcare, had advised King County about "a partnership of Pioneer Human Services and Navos to take on a facility like the former Red Lion Hotel in Tukwila (now "Riverside Residences") and remodel it to serve several concurrent functions." CP 266.

the MIC zone had been pre-selected by its proponents, must be clearly appreciated in evaluating the Ordinance's preclusive effect.

RCW 36.70A.200(5) clearly and unambiguously provides that: "No comprehensive plan or development regulation may preclude the siting of essential public facilities." In *Des Moines v. Puget Sound Regional Council*, 98 Wn. App. 23, 34 (1999) this Court approved the Board's definition of "preclude" as meaning to render impossible or impracticable, in the sense of being "incapable of being performed or accomplished by the means employed or at command" of the proponent. The Board in this case emphatically determined that Ordinance 2287 precluded the siting of Crisis Diversion Facilities. "Plainly, a jurisdiction renders the siting of an EPF impracticable when, in response to an inquiry about a permit for a particular location allowed under its current zoning, the jurisdiction imposes a moratorium on permit applications while it amends its zoning to restrict such EPFs to a location other than the proponent's chosen site." CP 1247; Order at 16.

**Before** 2287's enactment DESC had the potential ability to locate Crisis Diversion Facilities in any of Tukwila's commercial/industrial zoning districts, protected by Tukwila's Comprehensive Plan's **assurance** that "applications will be processed through the unclassified use permit process established in the City's development regulations." This afforded

DESC a multitude of properties located throughout the City to consider for purposes of siting these inherently controversial facilities, including Sleeping Tiger's hotel. *Afterwards*, only the CL/I zone was eligible for consideration by DESC as a potential location, and even then only the portion thereof located "south of Strander Boulevard." This artificially restricted area contained a mere 40 properties in total for an applicant to consider, only seven of which were available for sale or lease at the time for any purpose or use. CP 357-68; 370; 1199-1206. As appropriately noted by the Board, "[t]he record contains no information as to which, if any, of these individual properties is a viable site for crisis diversion services. It appears that the buildings in the area – including the 7 properties on the market – are industrial/warehouse buildings that would need to be retrofitted to meet the residential nature of the treatment facilities required by the RFP. We have only speculative evidence whether any of them could have been purchased/leased and rebuilt for DESC's purposes at a reasonable price on the County's timeline." CP 1251-2; Order at 20-21.

Zoning regulations which "may preclude" the siting of an Essential Public Facility are prohibited by the Act. Even if the standard for determining compliance was elevated to require, for example, that the offending ordinance must *actually preclude* the siting of the facility,

Ordinance 2287 would nevertheless be in violation of the Act. Despite the fact that DESC, the facility's proponent, had specifically selected Sleeping Tiger's property because it had the locational advantages combined with the physical features and amenities which made the property an ideal location, Tukwila effectively removed this property from consideration. DESC, in private meetings and at public hearings, repeatedly urged Tukwila to continue to allowing Crisis Diversion Facilities to be located in the MIC zone, even filing two petitions to the Board to force the City to comply with the Act. Tukwila's rejection of this request, combined with the extreme geographical restrictions imposed by Ordinance 2287, resulted in DESC abandoning Tukwila in favor of a more accommodating reception in Seattle. The Board correctly described this outcome, especially after DESC aggressively and exclusively pursued the Sleeping Tiger location for at least ten months, as being a "salient fact in the record" supporting its determination that Tukwila had precluded the siting of Crisis Diversion Facilities in violation of 36.70A.200(5). CP 1252; Order at 21. The creation of a special zoning district, after a proponent had pre-selected another permitted location, qualifies as a textbook example of preclusion.

**D. Tukwila's Abandonment of the Siting Process, as Established in Its Development Regulations in Accordance With Its Comprehensive Plan's Policies, and Adoption of a Restrictive Zoning Ordinance After**

**Months of Delay, Constituted a Violation of Planning Goal 7 of the GMA (RCW 36.70A.020(7)).**

Structurally, the GMA revolves around the accomplishment of thirteen core planning goals “adopted to guide the development and adoption of comprehensive plans and development regulations.” RCW 36.70A.020. Goal 7 mandates that “[a]pplications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.” RCW 36.70A.020(7). The Board’s Order in this case appropriately observed that, “[t]he Board has long recognized the particular applicability for GMA Goal 7 to EPF siting needs. If an EPF permit application is subject to arbitrary conditions or unpredictable processes, the facility is essentially precluded”.<sup>9</sup> CP 1254-5; Order at 23-24. The concept of transparency and predictability in permit processing further underlies RCW 36.70A.200(1)’s requirement for comprehensive plans to include a clearly established process for siting Essential Public

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<sup>9</sup> Other decisions of the Board have consistently emphasized the interconnectivity of Goal 7 and RCW 36.70A.200(5)’s prohibition against regulations which may preclude the siting of Essential Public Facilities. For example, in *Cascade Bicycle Club v. City of Lake Forest Park*, CPSGMHB Case No. 07-3-0010, Final Decision and Order dated May 23, 2007 at 13 the Board emphasized that: “As a matter of necessity, determining whether a development regulation is preclusive brings in aspects of GMA Goal 7, relating to processing permits in a timely, fair manner to ensure predictability. Consequently, the Board’s discussion intertwines these two GMA provisions.” Similarly, in *King County v. Snohomish County*, CPSGMHB Case No. 03-3-0011, Final Decision and Order dated October 13, 2003 at 14 the Board indicated that “compliance with RCW 36.70A.200 can best be understood in light of the GMA’s goals, specifically Goal 7.”

Facilities, a process which must be implemented under RCW 36.70A.040(3)(d) through consistent development regulations.

Prior to the enactment of Ordinance 2287 the Board approvingly characterized “Tukwila’s zoning regulations [as] present[ing] a coherent program for EPF siting.” Implicitly, the Board found that Tukwila’s unclassified use permit process, as implemented in its zoning regulations, satisfied Goal 7’s insistence on a city’s maintaining a permitting process that was timely, fair and predictable. Tukwila’s abandonment of this process, in favor of an *ad hoc* approach adopted in reaction to DESC’s anticipated application for an unclassified use permit, meant that Tukwila actually had no process in place to govern the siting of an Essential Public Facility. As indicated above, the Ordinance itself even revealed that the imposition of a moratorium was necessary to enable the City to “develop a process for siting these facilities within the City.” Rather than proceed with the predictable process established in its zoning code, Tukwila wanted the freedom to tailor a siting process specific to Crisis Diversion Facilities, necessarily compromising and discouraging its location in the City. As a result, the Board properly concluded that Tukwila had violated Goal 7 because “there was no way for DESC as potential applicant or Sleeping Tiger as property owner to know what the process would be, how long it would take [to complete], or what requirements or restrictions

might ultimately be imposed. In connection with EPF siting, such action by a City results in an unfair and unpredictable permitting process contrary to RCW 36.70A.020(7).” CP 1255; Order at 24.

**E. Tukwila’s Moratorium Was Never Considered by the Board and Its Existence Did Not Otherwise Influence the Board’s Decision.**

Instead of processing DESC’s application for an unclassified use permit to locate Crisis Diversion Facilities at Sleeping Tiger’s hotel, Tukwila imposed a moratorium for the specific purpose of preventing such an application from being submitted. The Board’s Order emphatically confirmed that “[t]he scope of the Board’s review is limited to determining whether a jurisdiction has achieved compliance with the GMA only with respect to those issues presented in a timely petition for review.” CP 1233; Order at 2. Although DESC separately filed petitions for review with the Board challenging the moratorium’s validity, it subsequently withdrew them as a result of Tukwila’s adoption of Ordinance 2287; Sleeping Tiger never challenged the moratorium. The Board’s Order further clarified that, “Sleeping Tiger was not a party to the moratorium cases, and the matter is not before the Board, according to the City. However, the Board is not being asked to rule here on the validity of the moratoriums. Rather, the Board must decide whether the City’s “process for identifying and siting” crisis diversion facilities was

consistent with its Comprehensive Plan and compliant with GMA requirements of RCW 36.70A.200(1). On this question, the Board is left with the firm and definite conviction that mistake has been committed.” CP 1245; Order at 14.

Nevertheless, Tukwila has argued, and presumably will continue to argue, that the Board’s decision was either based on the moratorium or improperly influenced by it. Simply stated, there is neither factual nor legal basis to support Tukwila’s position in this regard. Although the Board certainly referenced the moratorium’s existence as part of the circumstances and background surrounding the enactment of the Ordinance - which *was* presented to the Board for review by Sleeping Tiger - the Board unambiguously stated that its decision did not address the validity of the moratorium; rather, it was directed exclusively at Tukwila’s “undertak[ing] restrictive zoning to ensure that the selected site was no longer available.” CP 1246; Order at 15. The moratorium simply provided a prelude to the Ordinance’s enactment. Assuming Ordinance 2287 was never adopted by Tukwila, Sleeping Tiger clearly had no legal basis to attack the moratorium which Tukwila enacted to maintain the status quo. The moratorium, therefore, should not be considered by this Court, as it was not considered by the Board in the formulation of its Order in this case.

**F. The Board Correctly Determined that Ordinance 2287 Was Noncompliant With the GMA, Resulting in the Elimination of Any Deference the Board Was Required to Extend to Its Enactment by Tukwila.**

Local jurisdictions have broad discretion in adapting the requirements of the GMA to fit local conditions and realities. The Board's Order, quoting the Supreme Court of Washington's decision in *Swinomish Indian Tribal Community v. Western Washington Growth Management Hearings Board*, 161 Wn.2d 415, 423-4 (2007), summarized as follows the standard it applied in determining whether Tukwila's Ordinance 2287 was consistent with the Act:

The Board is charged with determining compliance with the GMA and, when necessary, invalidating noncomplying comprehensive plans and development regulations. The Board shall find compliance unless it determines that the action by the state agency, county or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]. RCW 36.70A.320(3). An action is clearly erroneous if the Board is left with the firm and definite conviction that a mistake has been committed. Comprehensive plans and development regulations [under the GMA] are presumed valid upon adoption. RCW 36.70A.320(1). ***Although RCW 36.70A.320(1) requires the Board to give deference to a [jurisdiction], the [jurisdiction's] actions must be consistent with the goals and requirements of the GMA.***

CP 1234; Order at 3. (emphasis added; internal quotations omitted).

Despite the high threshold applicable to its review, the Board unanimously and convincingly concluded that Tukwila had violated the Act when it amended its zoning ordinances to significantly restrict the possibility of locating Crisis Diversion Facilities in the City. Tukwila will presumably contend that the Board failed to extend a sufficient degree of respect under the Act to the exercise of its legislative prerogatives, but it has been established that “this deference ends when it is shown that a county’s [or city’s] actions are in fact a “clearly erroneous” application of the GMA.” *Quadrant Corp. v. Central Puget Sound Growth Management Hearings Board*, 154 Wn.2d 224, 238 (2005). As the Supreme Court recently explained, “. . . the Board [should properly] give deference to the [city or] county, but all standards of review require as much in the context of administrative action. The relevant question is the degree of deference to be granted under the “clearly erroneous” standard. The amount is neither unlimited nor does it approximate a rubber stamp. It requires the Board to give the [city’s or] county’s action a “critical review” and is a “more intense standard of review” than the arbitrary and capricious standard.”

*Swinomish, supra* at 435, fn. 8.<sup>10</sup>

In 1997 the legislature elevated the Board's standard for reviewing actions of local governments, requiring that the Board find non-compliance only if the action is "clearly erroneous", instead of the "preponderance of the evidence" test previously in place. RCW 36.70A.320(3). At the same time the legislature made specific findings requiring the Board to "apply a more deferential standard of review to actions of counties and cities . . . to grant deference to counties and cities in how they plan for growth." RCW 36.70A.3201. The Board's Order applied the correct standard of review in this case when it invalidated an ordinance which unquestionably was noncompliant with the GMA. As the 1997 amendments clearly provide, the local jurisdiction's actions must be "consistent with the requirements and goals" of the GMA in order to justify the extension of any degree of deference. RCW 36.70A.3201. In this case they simply were not.

## V. CONCLUSION

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<sup>10</sup> McGee, Henry W. Jr., and Howell, Brock W., *Washington's Way II: The Burden of Enforcing Growth Management in the Crucible of the Courts and Hearings Boards*, 31 Seattle U. L. Rev. 549, 561 (2008), agrees with this distinction. "If boards granted deference to local interpretations by applying the clearly erroneous standard to questions of law, the boards' interpretations would be undermined and not worthy of deference by the courts. Thus, hearing boards must not defer to local interpretations of the GMA, but rely on their own specific expertise with the GMA."

As recognized by the Washington Supreme Court, “[t]he Board is charged with adjudicating GMA compliance, and, when necessary, invalidating noncompliant comprehensive plans and development regulations.” *King County, supra* at 552. Although this Court reviews the Board’s legal conclusions *de novo*, it should appropriately “give substantial weight to the Board’s interpretation of the statute it administers.” *Id.* at 553. Tukwila, as the party challenging the Board’s Order in this case, has the legal burden of demonstrating its invalidity. RCW 34.05.570(1)(a). Tukwila, it is respectfully submitted, cannot satisfy its burden.

As correctly determined by the Board, Tukwila’s enactment of Ordinance 2287 violated the GMA because it was inconsistent with and failed to implement the policies established in its Comprehensive Plan relative to the siting of Essential Public Facilities; the ordinance on its face actually confirms that its purpose was to establish a customized siting process applicable exclusively to Crisis Diversion Facilities. This constituted non-compliance with RCW 36.70A.040(3)(d). More fundamentally, especially because it was adopted after the facility’s sponsor had identified a specific location for the facility at Sleeping Tiger’s hotel, Ordinance 2287 precluded the siting of an Essential Public Facility in Tukwila. This constituted a violation of RCW 36.70A.200(5),

as well as Goal 7 of the GMA. RCW 36.70A.020(7). The Board's decision to invalidate Ordinance 2287 was justified under the circumstances.

Accordingly, Sleeping Tiger respectfully requests the Court to affirm and reinstate the Board's Final Decision and Order.

DATED this 14<sup>th</sup> day of February, 2012.

Sleeping Tiger, LLC

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**A**

**BOARD'S FINAL DECISION AND ORDER  
DATED JANUARY 4, 2011**

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1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
2 CENTRAL PUGET SOUND REGION  
3 STATE OF WASHINGTON  
4

5 SLEEPING TIGER, LLC,

6  
7 Petitioner,

8 v.

9  
10 CITY OF TUKWILA,

11 Respondent.  
12

CASE NO. 10-3-0008

(SLEEPING TIGER)

FINAL DECISION AND ORDER

13  
14 **SYNOPSIS**

15 Reviewing a challenge to siting crisis diversion facilities, the Board found that the City of  
16 Tukwila's adoption of restrictive zoning was inconsistent with its comprehensive plan  
17 provisions for identifying and siting essential public facilities and precluded siting the  
18 facilities. The City's action did not comply with RCW 36.70A.200 and was not guided by  
19 GMA Goal 7. The Board entered a determination of invalidity.  
20

21  
22 **I. PROCEDURAL BACKGROUND**

23 City of Tukwila Ordinance No. 2287 adopted a zoning designation where crisis diversion  
24 facilities and crisis interim diversion facilities may be sited subject to an unclassified use  
25 permit. The City's action was challenged by Sleeping Tiger, LLC, the operator of a hotel  
26 facility selected by Downtown Emergency Service Center (DESC) as a potential site for  
27 crisis diversion services under a King County program. Sleeping Tiger's facility, called  
28 RiverSide Residences, is not located in the zone designated in Ordinance 2287.  
29

30  
31 On November 18, 2010, the Board convened the Hearing on the Merits (HOM) at Tukwila  
32 City Hall. Present for the Board were Board members Margaret Pageler, Dave Earling, and  
Nina Carter, with Board staff attorney Julie Taylor. Sleeping Tiger appeared *pro se* by

1 William Summers, one of its principals, accompanied by Allison Summers. The City of  
2 Tukwila was represented by its City Attorney Shelley Kerslake, accompanied by City  
3 Planner Brandon Miles. Sue Garcia provided court reporting services.  
4

5 The hearing provided the Board an opportunity to ask questions clarifying important facts in  
6 the case and providing better understanding of the legal arguments of the parties.  
7

## 8 **II. JURISDICTION AND STANDARD OF REVIEW**

### 9 **A. BOARD JURISDICTION**

10 The Board finds that the Petition for Review was timely filed, pursuant to RCW  
11 36.70A.290(2). The Board finds that Petitioner has standing to appear before the Board,  
12 pursuant to RCW 36.70A.280(2). The Board finds that it has jurisdiction over the subject  
13 matter of the petition pursuant to RCW 36.70A.280(1).  
14

### 15 **B. STANDARD OF REVIEW**

16 The Growth Management Boards are tasked by the legislature with determining compliance  
17 with the GMA. The Supreme Court explained in *Lewis County v. Western Washington*  
18 *Growth Management Hearings Board*:<sup>1</sup>  
19

20 The Board is empowered to determine whether [city] decisions comply with  
21 GMA requirements, to remand noncompliant ordinances to [the city], and even  
22 to invalidate part or all of a comprehensive plan or development regulation  
23 until it is brought into compliance.  
24

25 The scope of the Board's review is limited to determining whether a jurisdiction has  
26 achieved compliance with the GMA only with respect to those issues presented in a timely  
27 petition for review.<sup>2</sup>  
28  
29  
30  
31  
32

<sup>1</sup> 157 Wn.2d 488 at 498, fn. 7, 139 P.3d 1096 (2006).

<sup>2</sup> RCW 36.70A.290(1).

1 The GMA creates a high threshold for challengers. A jurisdiction's GMA enactment is  
2 presumed valid upon adoption.<sup>3</sup> "The burden is on the petitioner to demonstrate that [the  
3 challenged action] is not in compliance with the requirements of [the GMA]."<sup>4</sup>  
4

5 In *Swinomish Indian Tribal Community, et al. v Western Washington Growth Management*  
6 *Hearings Board*,<sup>5</sup> the Supreme Court summarized the Board's standard of review:

7 The Board is charged with determining compliance with the GMA and, when  
8 necessary, invalidating noncomplying comprehensive plans and development  
9 regulations. The Board "shall find compliance unless it determines that the  
10 action by the state agency, county or city is clearly erroneous in view of the  
11 entire record before the board and in light of the goals and requirements of  
12 [the GMA]." RCW 36.70A.320(3). An action is "clearly erroneous" if the Board  
13 is "left with the firm and definite conviction that a mistake has been  
14 committed." "Comprehensive plans and development regulations [under the  
15 GMA] are presumed valid upon adoption." RCW 36.70A.320(1). Although  
16 RCW 36.70A.3201 requires the Board to give deference to a [jurisdiction], the  
17 [jurisdiction's] actions must be consistent with the goals and requirements of  
18 the GMA.

18 As to the degree of deference to be granted under the clearly erroneous standard, the  
19 *Swinomish* Court stated:<sup>6</sup>

20 The amount [of deference] is neither unlimited nor does it approximate a  
21 rubber stamp. It requires the Board to give the [jurisdiction's] actions a "critical  
22 review" and is a "more intense standard of review" than the arbitrary and  
23 capricious standard.

24 "A board's order must be supported by substantial evidence," and the evidence must be of  
25 sufficient quantity "to persuade a fair-minded person of the truth or correctness of the order."  
26 *Thurston County v Western Washington Growth Management Hearings Board*.<sup>7</sup> Thus, in the  
27 recent Court of Appeals decision in *Suquamish Tribe et al v Central Puget Sound Growth*  
28

31 <sup>3</sup> RCW 36.70A.320(1).

32 <sup>4</sup> RCW 36.70A.320(2).

<sup>5</sup> 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007) (internal case citations omitted).

<sup>6</sup> 161 Wn.2d at 435, fn. 8 (internal citations omitted).

<sup>7</sup> 164 Wn.2d 329, 341, 190 P.3d 38 (2008)

1 *Management Hearings Board*,<sup>8</sup> the Division II Court of Appeals admonished the Board for  
2 deferring to the county on issues that were not supported by substantial evidence in the  
3 record.

### 4 5 **III. PRELIMINARY MATTERS**

6 At the outset of the hearing the Presiding Officer questioned Petitioner about the source of  
7 various photographs attached as Exhibits 1, 11 and 12 to Petitioner's Prehearing Brief.<sup>9</sup> The  
8 Presiding Officer requested, and Petitioner subsequently provided, an affidavit  
9 authenticating the photographs.<sup>10</sup>

10  
11 The Presiding Officer questioned the City about Exhibit 8 to the City's Prehearing Brief – a  
12 memorandum of Amnon Shoenfeld<sup>11</sup> dated 8/24/2010. The City identified this document as  
13 a report prepared subsequent to the enactment of the challenged ordinance but submitted  
14 to demonstrate that DESC has chosen a site in Seattle for its crisis diversion facility  
15 application. The Presiding Officer ruled that Exhibit 8 lacked authentication and would not  
16 be allowed. The Board submitted for the record certain pleadings and orders in prior related  
17 Board proceedings and designated these Hearing on the Merits Exhibit 1.<sup>12</sup> These  
18 documents are authenticated by stipulation of the City, by attorney attestation, or by Board  
19 order. There was no objection to these materials. HOM Exhibit 1 demonstrates that DESC  
20 chose a site in Seattle for its crisis diversion facility.  
21  
22  
23  
24

25 <sup>8</sup>145 Wn.App.743 (July 7, 2010)

26 <sup>9</sup> Enlargements of these photographs were brought to the hearing as illustrative exhibits.

27 <sup>10</sup> Declaration of William C. Summers, Nov. 24, 2010.

28 <sup>11</sup> Amnon Shoenfeld is identified in Petitioner's Ex. 5 (Sep. 2, 2008) as Director of King County Mental Health,  
29 Chemical Abuse and Dependency Services.

30 <sup>12</sup> *Downtown Emergency Service Center v City of Tukwila*, Case No. 9-3-0014 (*DESC I*) coordinated with  
31 Case No. 10-3-0006 (*DESC II*):

- 32 • Order of Dismissal, July 16, 2010;
- Motion for Voluntary Dismissal, July 14, 2010;
- Order Granting Fifth Settlement Extension and Amending Case Schedule, June 24, 2010;
- Fifth Request for Settlement Extension, June 24, 2010;
- Order in Response to DESC Status Report and Request for Settlement Extension, May 25, 2010;
- Settlement Status Report and Third Request for Settlement Extension, May 24, 2010.

1 During the Hearing, the City provided copies of Comprehensive Plan Goal 15.2, concerning  
2 siting of essential public facilities. The document was designated Hearing on the Merits  
3 Exhibit 2.  
4

5 **IV. LEGAL ISSUE AND DISCUSSION**

6 **A. LEGAL ISSUE, ABANDONED MATTERS,  
7 AND ORDER OF DISCUSSION**

8 The Prehearing Order states the legal issue:  
9

- 10 1. *In enacting Tukwila Ordinance Nos. 2287 and 2288, did the City of Tukwila violate*  
11 *RCW 36.70A.020, RCW 36.70A.040, RCW 36.70A.070, RCW 36.70A.100, RCW*  
12 *36.70A.150 and/or RCW 36.70A.200 by effectively precluding the siting of crisis*  
*diversion facilities – an essential public facility – within the City?*

13 Petitioner acknowledged at the Hearing on the Merits that its challenge to Ordinance No.  
14 2288 was **abandoned**.<sup>13</sup>  
15

16 Petitioner's arguments in its prehearing brief and at hearing were based on RCW  
17 36.70A.200(1) and (5), the GMA provisions on siting essential public facilities, and on RCW  
18 36.70A.020(6) and (7), the GMA Goals concerning private property and permits. Petitioner  
19 also argued that the City's action is inconsistent with its comprehensive plan. RCW  
20 36.70A.040(3) and RCW 36.70A.070(preamble) contain requirements for such consistency.  
21  
22

23 The legal issue further alleges non-compliance with RCW 36.70A.100 and .150, GMA  
24 provisions which require regional coordination. Petitioner has provided no information or  
25 argument about any comprehensive plan provision of King County that might have given  
26 rise to a duty for the City of Tukwila to coordinate, and Petitioner's briefs make no citations  
27 to these sections of the statute. Therefore the issue of noncompliance with RCW  
28 36.70A.100 and .150 is deemed **abandoned**.  
29  
30

31  
32 <sup>13</sup> Ordinance No. 2288: Repealing a moratorium on diversion facilities and diversion interim service facilities for  
the treatment of mentally ill and chemically dependent adults in crisis, which was established by Ordinance  
No. 2287; repealing Ordinance 2287.

1 Thus the Board here addresses the legal issue as follows:

- 2 1. *In enacting Tukwila Ordinance Nos. 2287 and ~~2288~~, did the City of Tukwila violate*  
3 *RCW 36.70A.020(6) and (7), RCW 36.70A.040(3), RCW 36.70A.070 (preamble),*  
4 *RCW ~~36.70A.100~~, RCW ~~36.70A.150~~ and/or RCW 36.70A.200(1) and (5) by*  
5 *effectively precluding the siting of crisis diversion facilities – an essential public facility*  
6 *– within the City?*

7 The Board addresses the issue in the following order:

- 8 • Consistency with the comprehensive plan and the City's process for identifying and  
9 siting EPFs – RCW 36.70A.040, .070(preamble), and .200(1).  
10 • Preclusion of siting EPFs – RCW 36.70A.200(5)  
11 • GMA private property and permit goals – RCW 36.70A.020(6) and (7)

12 Finally, the Board addresses Petitioner's request for a determination of invalidity.

13  
14 **B. APPLICABLE LAW**

15 RCW 36.70A.040 and .070 require consistency: "Each city ... shall adopt a comprehensive  
16 plan and development regulations that are consistent with and implement the  
17 comprehensive plan."<sup>14</sup> "The plan shall be an internally consistent document."<sup>15</sup>

18  
19  
20 RCW 36.70A.200 Siting of essential public facilities, begins:

21 (1) The comprehensive plan of each [city] shall include a process for identifying and  
22 siting essential public facilities. Essential public facilities include those facilities that  
23 are typically difficult to site, such as ... state and local correctional facilities, ... and in-  
24 patient facilities including substance abuse facilities [and] mental health facilities ...

25 In addition to the required identification and siting process, the statute prohibits preclusion of  
26 the siting of essential facilities. RCW 36.70A.200(5) states:

27 (5) No local comprehensive plan or development regulations may preclude the siting  
28 of essential public facilities.

29  
30 RCW 36.70A.020(6) and (7) are the GMA Goals relied on by Petitioner:  
31  
32

<sup>14</sup> RCW 36.70A.040(3)

<sup>15</sup> RCW 36.70A.070 (preamble)

1 (6) Property rights. Private property shall not be taken for public use without just  
2 compensation having been made. The property rights of landowners shall be  
3 protected from arbitrary and discriminatory actions.

4 (7) Permits. Applications for both state and local government permits should be  
5 processed in a timely and fair manner to ensure predictability.

6  
7 **C. CHALLENGED ACTION and RELATED MATTERS**

8 Tukwila Ordinance No. 2287<sup>16</sup> amends the City's zoning regulations to define "diversion  
9 facility" and "diversion interim services facility" and to allow such facilities in an area of the  
10 Commercial/Light Industrial (C/LI) zone south of Strander Boulevard, subject to an  
11 unclassified use permit.<sup>17</sup> Prior to enactment of Ordinance No. 2287, crisis diversion  
12 facilities were not specifically named in any City zoning district and therefore could have  
13 been located in eight of Tukwila's manufacturing or commercial zones, subject to an  
14 unclassified use permit. "Essential public facilities, except those listed separately in any of  
15 the districts established by this title," are allowed as unclassified uses in the Tukwila Urban  
16 Center, Commercial Light Industrial District, Light Industrial District, Heavy Industrial District,  
17 Manufacturing Industrial Center/Light Industrial District, Industrial Center/Heavy Industrial  
18 District, Tukwila Valley South District, and Tukwila South Overlay District.<sup>18</sup>

19  
20  
21 In September 2009, Downtown Emergency Service Center (DESC), a provider of homeless  
22 services, approached the City of Tukwila to inquire about the process for siting crisis  
23 diversion facilities at the RiverSide Residences in Tukwila's Manufacturing Industrial Center  
24 (MIC) zone. When city planners identified such services as an EPF, the City enacted  
25

26  
27 <sup>16</sup> Ordinance 2287 -- Defining Diversion Facility and Diversion Interim Services Facility and updating the zoning  
28 code and its provisions for such uses.

29 <sup>17</sup> TMC 18.30.050(8).

30 <sup>18</sup> TMC 18.28.050(2) – Tukwila Urban Center District  
31 TMC 18.30.050(3) – Commercial Light Industrial District  
32 TMC 18.32.050(5) – Light Industrial District  
TMC 18.34.050(5) – Heavy Industrial District  
TMC 18.35.050(3) – Manufacturing Industrial Center/Light Industrial District  
TMC 18.38.050(5) – Industrial Center/Heavy Industrial District  
TMC 18.40.050(4) – Tukwila Valley South District  
TMC 18.41.050(3) – Tukwila South Overlay District

1 Ordinance No. 2248, a moratorium on applications for crisis diversion facilities anywhere in  
2 the City.<sup>19</sup> The City undertook a study process to understand the nature of crisis diversion  
3 facilities and to propose development regulations.  
4

5 DESC filed a Petition for Review with the Board challenging the City's moratorium as  
6 precluding the siting of an essential public facility.<sup>20</sup> Nevertheless, DESC requested a  
7 settlement extension to allow it to work with the City to resolve the siting question. City staff  
8 analyzed King County's locational criteria for the diversion services and assessed the likely  
9 fit in various Tukwila zoning districts. DESC and Sleeping Tiger engaged in active advocacy  
10 with city staff and officials for use of the RiverSide site.<sup>21</sup>  
11

12  
13 Subsequently the City enacted Ordinance No. 2277, a moratorium on applications for any  
14 change of use for non-industrial uses in the MIC zone, where the RiverSide Residences are  
15 located. Again, DESC appealed the Ordinance to this Board,<sup>22</sup> but requested a settlement  
16 extension to allow it to work with the City.  
17

18 On May 17, 2010, the City enacted Ordinance 2287, providing a definition for "diversion  
19 facilities" and "diversion interim services facilities" and allowing these EPFs only in a portion  
20 of the Commercial/Light Industrial (C/LI) District but not in the MIC zone or at DESC's  
21 requested site. DESC sought an extension of time to determine "whether the zoning yields  
22 viable sites" for the planned facilities,<sup>23</sup> but soon voluntarily dismissed its appeals, indicating  
23 it had located a site in Seattle for the diversion services.<sup>24</sup>  
24  
25  
26  
27

28 <sup>19</sup> Ordinance No. 2248: Relating to diversion facilities and diversion interim service facilities for the treatment of  
29 mentally ill and chemically-dependent adults in crisis, adopting a six-month moratorium on establishing such  
30 uses, and on the acceptance and/or processing of applications related thereto; providing for severability, and  
31 declaring an emergency and establishing an effective date.

<sup>20</sup> *DESC I v. City of Tukwila*, GMHB Case No. 09-3-0014 (filed Nov. 13, 2009)

<sup>21</sup> Petitioner's Prehearing Brief, at 6.

<sup>22</sup> *DESC II v City of Tukwila*, GMHB Case No. 10-3-0006 (filed Apr. 23, 2010).

<sup>23</sup> HOM Ex. 1, Fifth Request for Settlement Extension, at 1.

<sup>24</sup> HOM Ex. 1, Motion for Voluntary Dismissal, at 1.

1 The Petitioner here is the owner of RiverSide Residences, DESC's preferred site in Tukwila.

2 Petitioner states:

3 [T]he preclusive effect of Tukwila's actions, starting with its moratorium and  
4 culminating in the enactment of Ordinance No. 2287, has been uncontrovertibly  
5 established by DESC's decision to discontinue its efforts to locate the facilities in  
6 Tukwila.<sup>25</sup>

7 The City responds that the moratoriums are no longer before the Board<sup>26</sup> and that the City  
8 zoning solution was the result of a thoughtful process which in fact identified an appropriate  
9 area of the City where viable sites for crisis diversion facilities may be found.<sup>27</sup>

#### 11 D. STATEMENT OF FACTS

12 Sleeping Tiger's RiverSide property is a 118-room hotel/motel property located on Tukwila  
13 International Boulevard (Highway 99) in Tukwila's Manufacturing Industrial Center (MIC)  
14 zone just south of Boeing Field.<sup>28</sup> The 5.2 acre property was previously franchised as a  
15 Red Lion Hotel. The facilities include a lobby, commercial kitchen, dining rooms, meeting  
16 rooms, laundry facilities, 4,500 square foot conference center, lawn and patio areas, an  
17 exterior swimming pool, and access to the Duwamish River trail.<sup>29</sup>

18 Starting in 2008, Sleeping Tiger began leasing furnished units on a month-to-month basis to  
19 low-income tenants through a master lease with Downtown Emergency Service Center  
20 (DESC).<sup>30</sup> DESC is a provider of services to homeless and other distressed persons in King  
21 County. Navos, a provider of in-patient psychiatric and drug addiction care, and Pioneer  
22 Human Services, whose vocational program runs a food service plant and could provide  
23 building renovation and janitorial services, also expressed "enthusiastic" interest in a  
24 partnership to locate services at the former Red Lion Hotel. Discussing the advantages of  
25  
26  
27  
28

29  
30 <sup>25</sup> Petitioner's Reply, at 6.

31 <sup>26</sup> City's Prehearing Brief, at 2, fn. 1.

32 <sup>27</sup> City's Prehearing Brief, passim.

<sup>28</sup> Petitioner's Prehearing Brief at 1, 2 and Ex. 1, aerial view of facilities.

<sup>29</sup> *Id.* The City has not disputed these facts, and they are taken as established.

<sup>30</sup> *Id.*

1 the 118-bed facility with kitchen and support services, Navos CEO David Johnson stated in  
2 September 2008:<sup>31</sup>

3       Eventually, when the County is ready to launch its crisis diversion center, this  
4       complex would be ideally located to house that center.

5  
6 In August 2009, King County issued a request for proposal (RFP) soliciting proposals from  
7 service providers to establish crisis diversion facilities.<sup>32</sup> The RFP sought to implement one  
8 of the program recommendations of the County's Mental Illness Drug Dependency (MIDD)  
9 Action Plan – a plan funded by a special voter-approved sales tax increase. Crisis diversion  
10 under the MIDD plan diverts individuals from the criminal justice system by providing "front  
11 door" access to needed assessment, stabilization, services and treatment.<sup>33</sup>

12  
13 King County's RFP called for a Crisis Diversion Facility of 16 beds and a Crisis Diversion  
14 Interim Service Facility of 20 beds. Crisis diversion involves stays of 12 to 72 hours, some of  
15 which may be police holds.<sup>34</sup> Crisis diversion interim services provide a maximum two-week  
16 stay for case management and counseling. Crisis diversion and interim services are not  
17 intended to provide long-term housing for this population. However, the 24 hour per day  
18 operation includes meal service, nursing services, shower and laundry, psychiatric and  
19 chemical dependency evaluation, and transportation arrangements for client appointments  
20 and final disposition.<sup>35</sup> Substantial evidence in the record indicates that the RiverSide facility  
21 has the necessary beds, plumbing, kitchen, and space for specialized staff and services to  
22 readily accommodate the County's crisis diversion and interim diversion needs.<sup>36</sup>  
23  
24  
25  
26

27  
28 <sup>31</sup> Petitioner's Ex. 5, Email 9/2/2008 from David Johnson, CEO of Navos, to Amnon Shoenfeld, Director King  
29 County Mental Health, Chemical Abuse and Dependency Services Division.

30 <sup>32</sup> City Ex. 3; Petitioner's Ex. 7, Staff report, at 3.

31 <sup>33</sup> *Id.* at 5.

32 <sup>34</sup> *Id.* at 6-7. In a "police hold," the diversion is an alternative to jail; a person who demands to leave the facility  
will be picked up by the police and taken to jail.

<sup>35</sup> *Id.* at 8.

<sup>36</sup> Renovation would be required to provide nursing stations, security improvements, and general upgrade. The  
County RFP allowance in the MIDD RFP for one-time costs for building remodeling was \$500,000. City's Ex.  
3, at 12.

1 The parties here agree that crisis diversion facilities and crisis diversion interim facilities are  
2 essential public facilities within the definition of RCW 36.70A.200. Essential public facilities  
3 include "those facilities that are typically difficult to site," including "state and local  
4 correctional facilities...and in-patient facilities including substance abuse facilities [and]  
5 mental health facilities." <sup>37</sup> EPFs provide necessary public service, but it is "not necessary  
6 that the facilities be publicly owned."<sup>38</sup> Further, the criteria apply to the facilities, and not the  
7 operator;<sup>39</sup> thus, Sleeping Tiger has a continuing interest in avoiding preclusion of use of  
8 RiverSide Residences for crisis diversion or other EPF uses even though DESC has  
9 selected another site for the current MIDD project.

## 11 E. DISCUSSION AND ANALYSIS

### 13 1. *Consistency with Comprehensive Plan provisions for identifying and siting* 14 *EPFs.*

15 In an early case concerning the expansion of SeaTac Airport, the Board explained the GMA  
16 requirement concerning local jurisdiction accommodation of essential public facilities:

17 There are two duties imposed by RCW 36.70A.200: a duty to adopt, in the plan, a  
18 process for siting essential public facilities (EPFs); and a duty not to preclude the  
19 siting of EPFs in a plan or implementing development regulations.<sup>40</sup>

20 When a jurisdiction's comprehensive plan "includes a process for identifying and siting"  
21 EPFs, its development regulations and other actions must be consistent with that process.

22 Tukwila's Comprehensive Plan contains the necessary process at Goal 15.2.<sup>41</sup> Policy 15.2.2  
23 indicates how EPFs are identified:

24 15.2.2 "Essential public services" are facilities which provide basic public services,  
25 provided in one of the following manners: directly by a government agency, by a  
26 private entity substantially funded or contracted for by a government agency, or  
27  
28

29  
30 <sup>37</sup> RCW 36.70A.200(1)

31 <sup>38</sup> WAC 365-196-550(1)(b).

32 <sup>39</sup> WAC 365-196-550(1)(e).

<sup>40</sup> *Port of Seattle v City of Des Moines*, CPSGMHB Case No. 97-3-0014, Final Decision and Order (Aug. 13, 1997), at 7.

<sup>41</sup> HOM Exhibit 2.

1 provided by a private entity subject to public service obligations (i.e., private utility  
2 companies which have a franchise or other legal obligation to provide service  
3 within a defined service area).

4 Policy 15.2.3 provides the process for siting:

5 15.2.3 Applications for essential public facilities will be processed through the  
6 unclassified use permit process established in the City's development regulations.  
7 This process shall assure that such facilities are located where necessary and that  
8 they are conditioned as appropriate to mitigate their impacts on the community.

9 In accordance with that policy, Tukwila's zoning regulations present a coherent program for  
10 EPF siting. Certain named EPFs are specifically allowed in designated zones, sometimes as  
11 conditional or unclassified uses. For example, hospitals are allowed in the Heavy Industrial  
12 District as a conditional use;<sup>42</sup> correctional facilities and secure community transition  
13 facilities are allowed in the MIC zone as unclassified uses.<sup>43</sup> Any EPF not specifically  
14 named as allowed in a designated zone is permitted as an unclassified use in MIC and any  
15 of seven other zones. "Essential public facilities, except those listed separately in any of the  
16 districts established by this title," are allowed as unclassified uses in the eight zones.<sup>44</sup> This  
17 scheme provides flexibility for project proponents to find appropriate sites for unique  
18 services and for the City to appropriately condition applications for previously unidentified  
19 EPFs anywhere in these eight non-residential zones.<sup>45</sup>  
20  
21  
22

23  
24 <sup>42</sup> TMC 18.34.040(10).

<sup>43</sup> TMC 18.38.050(3), (12).

25 <sup>44</sup> Unclassified use permits allowed for "Essential public facilities, except those listed separately in any of the  
26 districts established by this title" in:

27 TMC 18.28.050(2) – Tukwila Urban Center District

28 TMC 18.30.050(3) – Commercial Light Industrial District

29 TMC 18.32.050(5) – Light Industrial District

30 TMC 18.34.050(5) – Heavy Industrial District

31 TMC 18.35.050(3) – Manufacturing Industrial Center/Light Industrial District

32 TMC 18.38.050(5) – Industrial Center/Heavy Industrial District

TMC 18.40.050(4) – Tukwila Valley South District

TMC 18.41.050(3) – Tukwila South Overlay District

<sup>45</sup> In describing the requirement that a comprehensive plan "include a process for identifying and siting" EPFs, the Board has pointed out: "EPFs are in many cases unique facilities with the location pre-selected by a proponent agency." *Halmo et al v Pierce County*, CPSGMHB Case No. 07-3-0004c, Final Decision and Order (Sep. 28, 2007), at 32.

1 Nevertheless, when the City learned of DESC's interest in siting a crisis diversion facility at  
2 the RiverSide Residences, instead of applying its unclassified use process for previously-  
3 unidentified EPFs, the City enacted a moratorium, allowing it to refuse to accept any  
4 unclassified use permit applications for diversion services while it reviewed its development  
5 regulations for such facilities. At the end of the extended moratorium, the City established  
6 restricted zoning that allowed crisis diversion facilities only in a narrow zone that did not  
7 include the RiverSide Residences.  
8

9  
10 In a similar case several years ago, the Department of Corrections sought to locate a work  
11 release program on the Western State Hospital campus in Lakewood in a facility it already  
12 owned and where such EPFs were allowed as a conditional use. The City of Lakewood  
13 enacted a moratorium, saying the impacts of the proposed use needed further study and  
14 mitigation. The City launched a process to assign such EPFs to a different zone. The Board  
15 said:

16  
17 The City's existing comprehensive plan policies, land use plan designation and  
18 implementing development regulations and zoning designations governing the  
19 location and siting of a state EPF enable the City to address the concerns the City  
20 has raised in the findings of fact. The City has clearly identified areas where EPFs  
21 should be located, including the WSH campus. It has plan policies and criteria  
22 enumerated in its development regulations, specifically the conditional use permit  
23 process, that allow reasonable conditions to be imposed to mitigate likely impacts  
24 of such an EPF. The moratorium precludes access to the City's existing EPF  
25 procedures.<sup>46</sup>

26 The Board concluded Lakewood's process was "the equivalent to precluding the EPF."

27 The City of Tukwila asserts that the validity of its moratoriums on crisis diversion siting is not  
28 at issue here.<sup>47</sup> The City points out that the moratoriums – Ordinance Nos. 2248 and 2277 -  
29 were challenged by DESC in Case Nos. 09-3-0014 and 10-3-0006. Those challenges have  
30

31  
32 <sup>46</sup> *DOC III/IV v City of Lakewood*, CPSGMHB Case No. 05-3-0043c, Final Decision and Order (Feb. 25, 2008),  
at 15.

<sup>47</sup> City's Prehearing Brief, at 2, fn. 1.

1 been withdrawn and the cases dismissed.<sup>48</sup> Sleeping Tiger was not a party to the  
2 moratorium cases, and the matter is not before the Board, according to the City.

3  
4 However, the Board is not being asked to rule here on the validity of the moratoriums.  
5 Rather, the Board must decide whether the City's "process for identifying and siting" crisis  
6 diversion facilities was consistent with its Comprehensive Plan and compliant with GMA  
7 requirements of RCW 36.70A.200(1). On this question, the Board is left with a firm and  
8 definite conviction that a mistake has been committed.  
9

10 Tukwila's Comprehensive Plan 15.2.3 provides: "Applications for essential public facilities  
11 will be processed through the unclassified use permit process established in the City's  
12 development regulations. This process shall assure that such facilities are located where  
13 necessary and that they are conditioned as appropriate to mitigate their impacts on the  
14 community."<sup>49</sup> WAC 365-196-550(5)(a) states: "Development regulations governing the  
15 siting of essential public facilities must be consistent with and implement the process set  
16 forth in the comprehensive plan."  
17

18  
19 Petitioner's RiverSide Residence property is situated within Tukwila's MIC zone. TMC  
20 18.38.050(5) specifically allows essential public facilities not "listed separately" to be sited in  
21 the MIC zone, "subject to the requirements, procedures and conditions established" by  
22 Tukwila's unclassified use permit process.  
23

24 However, instead of reviewing DESC's proposal and allowing its application for crisis  
25 diversion facilities through the City's unclassified use permit process, as envisioned by its  
26 Comprehensive Plan and required by its development regulations, the City of Tukwila, after  
27 a moratorium on applications and an eight-month delay, adopted Ordinance No. 2287.  
28 Ordinance 2287 foreclosed the ability of DESC to site the crisis diversion facilities at  
29  
30  
31  
32

<sup>48</sup> HOM Ex. 1, Order of Dismissal.

<sup>49</sup> HOM Ex. 2.

1 RiverSide by listing diversion facilities separately and specifically confining their location to  
2 the C/LI zone south of Strander Boulevard.

3  
4 The Board can readily see what would happen if such a process were found to comply with  
5 the GMA requirement for identifying and siting EPFs. Any local jurisdiction, upon  
6 information that a previously-unidentified essential public facility was likely to locate in its  
7 boundaries, could declare a moratorium on project applications and undertake restrictive  
8 zoning to ensure that the selected site was no longer available.<sup>50</sup> Such a process would  
9 soon undermine the GMA requirement not to preclude the siting of essential public facilities.  
10 Broadly applied across the state, the GMA goal of providing services to meet essential  
11 public needs would be frustrated and the public would not be well served.

12  
13  
14 When faced with the variety of tactics adopted by local jurisdictions to avoid accommodating  
15 essential public facilities, the Board has sought to understand and apply the GMA  
16 requirement not to preclude EPFs. In its first case on this issue, *Children's Alliance v*  
17 *Bellevue*,<sup>51</sup> the Board noted the Legislature's selection of "preclude" as opposed to  
18 "prohibit," and utilizing Webster's Dictionary, defined preclude as "to make impossible or  
19 impracticable."  
20

21 In *City of Des Moines v Puget Sound Regional Council*,<sup>52</sup> the Court of Appeals, while  
22 acknowledging that the GMA must be strictly construed, expressly endorsed the Board's  
23 definition of the anti-preclusion requirement. In that challenge to the SeaTac Airport  
24 expansion, the Court ruled that EPF "siting" includes the expansion of existing EPFs:

25  
26 This conclusion comports with the fundamental reasoning behind identifying EPFs  
27 and giving them special significance under the GMA – the fact that cities are just  
28

29  
30 <sup>50</sup> From the Petitioner's perspective: "Even after a proponent of an essential public facility identifies a specific  
31 location within a zoning district which permits its siting therein, the City is not required to actually process any  
32 land use applications relating to the facility. Rather, the City reserves the right, after receiving notice that a  
proponent is contemplating the filing of an unclassified use permit, to amend its development regulations in  
order to prohibit the siting of the facility in question in the particular district." Petitioner's Prehearing Brief, at 11.

<sup>51</sup> CPSCMHB Case No. 95-3-0011, Final Decision and Order (July 25, 1995), at 12.

<sup>52</sup> 98 Wn.App.23, 34-35, 988 P.2d 27 (Nov. 15, 1999) review denied 140 Wn.2d 1027 (June 6, 2000).

1 as likely to oppose the siting of necessary improvements to [existing] public  
2 facilities as they are to siting of new EPFs.<sup>53</sup>

3 The Court also ruled that EPF "siting" required cities to allow the necessary off-site  
4 construction and operation support activities:

5 The legislative purpose of RCW 36.70A.200(2) [now .200(5)] would be defeated if  
6 local governments could prevent the construction and operation of an EPF.<sup>54</sup>

7  
8 Thus the Court endorsed the Board's definition of preclusion and its application of the GMA  
9 provisions to achieve the legislative purpose of effective siting of EPFs.

10  
11 In the Board's cases, local government strategies for making EPF siting impracticable have  
12 taken the form of restrictive zoning (*Children's Alliance*),<sup>55</sup> the imposition of unreasonable  
13 requirements (*Hapsmith v City of Auburn*),<sup>56</sup> comprehensive plan policies directing  
14 opposition to a regional decision (*Port of Seattle v City of Des Moines*),<sup>57</sup> limiting sites to  
15 zones where available land is scarce and highly contaminated (*DOC/DSHS v Tacoma*),<sup>58</sup>  
16 imposing criteria that second-guess a siting decision made by a regional or state entity (*King*  
17 *County I v. Snohomish County*),<sup>59</sup> adopting standards inconsistent with state and federal  
18 regulations (*Cascade Bicycle Club v City of Lake City*),<sup>60</sup> and causing unpredictable delay  
19 through successive moratoriums (*DOC III/IV v City of Lakewood*).<sup>61</sup>

20  
21  
22 Plainly, a jurisdiction renders the siting of an EPF impracticable when, in response to an  
23 inquiry about a permit for a particular location allowed under its current zoning, the  
24 jurisdiction imposes a moratorium on permit applications while it amends its zoning to  
25 restrict such EPFs to a location other than the proponent's chosen site. The Board is left with  
26

27  
28 <sup>53</sup> 98 Wn.App. at 33.

29 <sup>54</sup> 98 Wn.App. at 34.

30 <sup>55</sup> CPSGMHB Case No. 95-3-0011, Final Decision and Order (July 25, 1995), at 12.

31 <sup>56</sup> CPSGMHB Case No. 95-3-0075c, Final Decision and Order (May 10, 1996), at 31-32.

32 <sup>57</sup> CPSGMHB Case No. 97-3-0014, Final Decision and Order (Aug. 13, 1997), at 5.

<sup>58</sup> CPSGMHB Case No. 00-3-0007, Final Decision and Order (Nov. 20, 2000), at 8-9.

<sup>59</sup> CPSGMHB Case No. 03-3-0011, Final Decision and Order (Oct. 13, 2003), at 14.

<sup>60</sup> CPSGMHB Case No. 07-3-0010c, Final Decision and Order (July 23, 2007), at 28.

<sup>61</sup> CPSGMHB Case No. 05-3-0043c, Final Decision and Order (Feb. 25, 2008), at 15.

1 a firm and definite conviction that such a process does not comply with the GMA mandate of  
2 "a process for identifying and siting" EPFs.

3  
4 **Conclusion.** The Board finds and concludes that Tukwila's adoption of Ordinance No. 2287  
5 was **clearly erroneous**. The Board concludes that Petitioner has carried its burden in  
6 demonstrating the City's action was **inconsistent** with its Comprehensive Plan policies, and  
7 **did not comply** with the RCW 36.70A.200(1) requirement of "a process for identifying and  
8 siting" EPFs.  
9

## 10 **2. Preclusion of Crisis Diversion Facility Siting through Restrictive Zoning**

11 Sleeping Tiger contends that the restrictive zoning adopted by the City of Tukwila precluded  
12 siting the proposed crisis diversion facility in violation of RCW 36.70A.200(5):

13 (5)No local comprehensive plan or development regulations may preclude the  
14 siting of essential public facilities.  
15

16 Sleeping Tiger asserts that the City deliberately sought to preclude the crisis diversion  
17 facility because it believes it has already taken its fair share of regional human services.<sup>62</sup>

18 The City objects that there is no foundation in the record for these allegations of bias.<sup>63</sup>

19 The Board notes it is well-settled that a jurisdiction cannot reject siting of an essential public  
20 facility on the grounds that other jurisdictions have not taken an equitable share of such  
21 facilities.<sup>64</sup> However, the Board assumes good faith on the part of the City and disregards  
22 this portion of Petitioner's brief.<sup>65</sup>  
23  
24  
25

26  
27 <sup>62</sup> Petitioner's Prehearing Brief, at 15-16.

28 <sup>63</sup> City's Prehearing Brief, at 9.

29 <sup>64</sup> See, e.g., *Hapsmith I*, CPSGMHB Case No. 95-3-0075c, Final Decision and Order (May 10, 1996),  
30 *DOC/DSHS*, CPSGMHB Case No. 00-3-0007, Final Decision and Order (Nov. 20, 2000), at 12

31 <sup>65</sup> See *King County v Snohomish County*, CPSGMHB Case No. 03-3-0011, Final Decision and Order (Oct. 13,  
32 2003), at 12-13: "Every party recounted the history and relative merits of a certain wastewater treatment  
project, characterizing the motivations, perceptions, and behaviors underlying inter-governmental  
communication, coordination, and cooperation, or alleged lack thereof. ... At the end of the day, the only  
question before the Board is a very simple one --- does Snohomish County's process for reviewing EPF  
permits, as adopted in Ordinance No. 03-006, comply with the Goals and Requirements of the Growth  
Management Act?"

1 The City counters that the only relevant question for the Board is whether the designated  
2 zone – the Commercial Light Industrial District south of Strander Boulevard – provides  
3 reasonable opportunities for siting diversion facilities.<sup>66</sup> The City points out that the area has  
4 convenient access to freeways, arterials and transit routes, is isolated from residential zones  
5 and commercial distractions, and contains some commercial/industrial properties for sale or  
6 lease.<sup>67</sup> The City states that the renovation allowance in the King County budget for the  
7 project would be sufficient to retrofit a warehouse or office building in the designated district  
8 for a crisis diversion facility.<sup>68</sup>

10  
11 The City makes three arguments in support of the adopted C/LI zoning:

- 12 • The C/LI area south of Strander Boulevard meets the County's locational criteria
- 13 for the services;
- 14 • The MIC zone must be reserved for manufacturing/industrial uses; and
- 15 • There are sites available in the designated C/LI area for crisis diversion facilities.

16 Ample evidence in the record supports the City's first assertion: the designated C/LI area  
17 meets the County's locational criteria.<sup>69</sup> Tukwila City planners did a thorough review of  
18 various zoning districts to identify areas of the City that might meet King County's locational  
19 criteria for the diversion services consistent with other City policies.<sup>70</sup> Each area was judged  
20 against the criteria of access to freeways, nearby metro bus routes, buildings over 7,200  
21 square feet and overall access to the site.<sup>71</sup> The City asserts:

22  
23           Petitioner cannot meet its burden of proof to demonstrate that the City's  
24           development regulation effectively precludes the siting of Crisis Diversion  
25

26  
27  
28 <sup>66</sup> City's Prehearing Brief, at 9.

29 <sup>67</sup> City Prehearing Brief, at 21-22; Ex. 11 and Supp. Ex. 3

30 <sup>68</sup> The Board finds no facts in the record to support the adequacy or inadequacy of the renovation allowance.  
31 The Board assumes that a renovated hotel, with beds, bathrooms, kitchens and other residential amenities in  
32 place, would be more economical and more quickly available for the required use than a warehouse or office  
building.

<sup>69</sup> City Ex. 2, at 0617-0635.

<sup>70</sup> King County did not participate in Tukwila's public process except to clarify the transit access needed to  
support the facilities. City Prehearing Brief, at 25.

<sup>71</sup> City's Prehearing Brief, at 15.

1 Program facilities when all of the regional siting criteria are met or exceeded by  
2 the City's decision.<sup>72</sup>

3 The Board agrees that the County's locational criteria are met in the limited area of the C/LI  
4 zone, but the Board still must consider the practicability of siting the facilities in that area.  
5

6 Second, the City argues that crisis diversion does not belong in the manufacturing center.  
7 Sleeping Tiger points out that the MIC district, where RiverSide Residences are located,  
8 meets the County's locational criteria, according to the staff report.<sup>73</sup> However, the City  
9 asserts that Tukwila's MIC zone has been designated by King County as one of the  
10 County's four manufacturing/industrial centers. The City states that King County Countywide  
11 Planning Policies require local governments to adopt zoning that protects the viability of  
12 these centers for manufacturing use.<sup>74</sup> Tukwila points to its Comprehensive Plan Policy  
13 11.1.5 which requires the City to limit non-manufacturing uses in the MIC zone except those  
14 uses that directly support manufacturing activity or provide services to employees.<sup>75</sup>  
15

16 The record before the Board provides substantial evidence that the City's MIC zone allows  
17 EPFs which do not serve or support manufacturing businesses or their employees. In  
18 particular, the MIC zone allows as unclassified uses correctional facilities, secure  
19 community transition facilities and any EPFs not specifically assigned to a different zone.<sup>76</sup>  
20

21 The City provided no evidence that a 16-bed crisis diversion facility and 20-bed interim  
22 services in the zone would in any way interfere with manufacturing activities. Sleeping Tiger  
23 showed that its property is fenced, with on-site parking and ability to contain and isolate its  
24 activities to avoid interference with neighboring industries.<sup>77</sup> Converting the former hotel for  
25  
26  
27

28  
29 <sup>72</sup> City Prehearing Brief, at 25.

30 <sup>73</sup> Hearing on the Merits; see City Ex. 2, at 0627-8

31 <sup>74</sup> City Ex. 2, at 0976-0988

32 <sup>75</sup> City's Prehearing Brief at 19, Ex. 2, at 0628.

<sup>76</sup> TMC 18.38.050(3) correctional facilities, (5) unspecified EPFs, and (12) secure community transition facilities.

<sup>77</sup> Petitioner's Prehearing Brief, Ex. 1.

1 crisis diversion use would not displace manufacturing. Thus the Board finds it can give this  
2 argument little weight.

3  
4 Third, the City contends that its restrictive zoning for the C/LI zone south of Strander  
5 Boulevard does not preclude the siting of crisis diversion facilities because there are  
6 available sites in the designated area at lease rates within the RFP limits.<sup>78</sup> In *DOC/DSHS v*  
7 *City of Tacoma*,<sup>79</sup> the Board considered a challenge to Tacoma's restrictive zoning for the  
8 siting of work release facilities, where the City proposed to allow these facilities only in one  
9 limited zone. The Board found that limiting work release facilities to the M-3 zone "where  
10 availability of non-developed, non-contaminated sites is problematic, effectively precludes  
11 the siting of new work release facilities."<sup>80</sup> On remand, the City adopted a new ordinance  
12 which allowed work release facilities in five zoning districts. When DOC protested that there  
13 still was no suitable land in these zones, the City prepared an inventory identifying 289  
14 parcels where the facilities could be permitted, with 79 of these parcels vacant. DOC  
15 prepared its own inventory, removing parcels unsuitable by DOC's more restrictive criteria,  
16 but still yielding 40 parcels. On this record, the Board ruled that DOC was not precluded  
17 from siting work release facilities in the designated zones.<sup>81</sup>

20  
21 What are the facts in the present record? Maps presented in the record show that the C/LI  
22 zone south of Strander Boulevard consists of at least 40 parcels. The City provided  
23 documentation of 7 properties available for purchase or lease.<sup>82</sup> The record contains no  
24 information as to which, if any, of these individual properties is a viable site for crisis  
25 diversion services. It appears that the buildings in the area – including the 7 properties on  
26 the market - are industrial/warehouse buildings that would need to be retrofitted to meet the  
27

30  
31 <sup>78</sup> City's Prehearing Brief, at 24.

32 <sup>79</sup> CPSGMHB Case No. 00-3-0007, Final Decision and Order (Nov. 20, 2000)

<sup>80</sup> *Id.* at 8-9.

<sup>81</sup> CPSGMHB Case No. 00-3-0007, Finding of Compliance (May 30, 2001) at 4-5.

<sup>82</sup> City Prehearing Brief, at 24, Ex. 11.

1 residential nature of the treatment facilities required by the RFP.<sup>83</sup> We have only speculative  
2 evidence whether any of them could have been purchased/leased and rebuilt for DESC's  
3 purposes at a reasonable price or on the County's timeline. HOM Exhibit 1 demonstrates  
4 that DESC chose a site in Seattle for its crisis diversion facility after "evaluating zoning  
5 amendments to the Tukwila City Code related to crisis diversion facilities" [Ordinance 2287]  
6 and "investigat[ing] whether the zoning yields viable sites" for the facilities.<sup>84</sup>  
7

8  
9 Tukwila bases its argument that crisis diversion services may reasonably be located in the  
10 designated area on the availability of 7 properties for sale or lease. The Board is not  
11 persuaded. The Board finds a stark contrast between the facts in *DOC/DSHS*, where 40  
12 viable parcels were identified after professional analysis, and the facts in the case before  
13 us, with 7 properties identified as on the market. There is, of course, no "bright-line" number  
14 of possible parcels that constitute compliance with the GMA mandate not to preclude EPFs.  
15 The salient fact in the record is that DESC, after reviewing Tukwila's restrictive zoning for a  
16 scant 8 weeks, located a site in Seattle and dismissed its challenge to Tukwila's  
17 moratorium.<sup>85</sup> While the Board must defer to the City, the Board must find credible evidence  
18 in the record to support that deference. As noted in the Board's cases and Court of Appeals  
19 decision *City of Des Moines* cited above, the Board defines "preclude" as "impracticable."  
20 Here the City's restrictive zoning is simply not supported by substantial evidence indicating  
21 that siting a crisis diversion facility in the limited area is practicable. The Board is left with a  
22 firm and definite conviction that a mistake has been committed. The City's limited zoning  
23 rendered siting the facility impracticable and precludes siting an EPF in violation of RCW  
24 36.70A.200(5).  
25  
26

27  
28 **Conclusion.** The Board finds and concludes that substantial evidence in the record  
29 supports Petitioner's contention that Ordinance 2287 precluded DESC from locating crisis  
30

31 <sup>83</sup> Petitioner cites to its Ex. 11 and 12 and states: "There are simply no buildings in this area, regardless of  
32 whether they may be available for lease, which can realistically accommodate these special purpose facilities."  
Petitioner's Prehearing Brief, at 15.

<sup>84</sup> HOM Ex. 1, Fifth Request for Settlement Extension

<sup>85</sup> HOM Ex. 1, Motion for Voluntary Dismissal.

1 diversion facilities on its chosen site or within the City of Tukwila. The Board concludes that  
2 Petitioner has carried its burden in demonstrating the City **failed to comply** with RCW  
3 36.70A.200(5) by adopting restrictive zoning that precluded the siting of crisis diversion  
4 facilities sought as part of King County's MIDD program.  
5

6 **3. Compliance with GMA Planning Goals 6 and 7**

7 RCW 36.70A.020(6) is the GMA property rights goal:

8 (6) Property rights. Private property shall not be taken for public use without just  
9 compensation having been made. The property rights of landowners shall be  
10 protected from arbitrary and discriminatory actions.  
11

12 Sleeping Tiger argues that the City's conduct was an arbitrary and discriminatory attack on  
13 its property rights:

14 Sleeping Tiger has unquestionably demonstrated in this Brief and accompanying  
15 Exhibits that the City of Tukwila, in its efforts to at all costs prevent the siting of crisis  
16 diversion facilities at RiverSide Residences, negatively and unfairly targeted  
17 Sleeping Tiger's property and DESC's ability to file an application for an unclassified  
18 use permit. Such conduct obviously rose above the significance of the arbitrary and  
19 discriminatory action against which the GMA was intended to provide protection.  
20 These actions, it should be emphasized, were not undertaken innocently or without  
21 an appreciation of their significance; rather, they were completed after both DESC  
22 and Sleeping Tiger had communicated that DESC, as the proponent of an essential  
23 public facility, had selected RiverSide as the site for the facilities.<sup>86</sup>

24 RCW 36.70A.020(6), or Goal 6 of the GMA, states that "property rights of landowners shall  
25 be protected from arbitrary and discriminatory actions." In order to prevail in a challenge  
26 based on Goal 6, a petitioner must prove that the action taken by a local jurisdiction is  
27 arbitrary and discriminatory.<sup>87</sup> An arbitrary decision is one that is not merely an error in  
28 judgment but is "baseless" and "in disregard of the facts and circumstances."<sup>88</sup> Given the  
29

30 <sup>86</sup> Petitioner's Prehearing Brief, at 17.

31 <sup>87</sup> *Cave/Cowan v City of Renton*, CPSGMHB Case No 07-3-0012, Final Decision and Order (July 30, 2007), at  
32 16-17; *Shulman v. City of Bellevue*, CPSGMHB Case No. 95-3-0076, Final Decision and Order (May 13, 1996)  
at 12; *Keesling v. King County*, CPSGMHB Case No. 05-3-0001, Final Decision and Order (July 5, 2005) at  
28-33.

<sup>88</sup> *Keesling, supra*, at 32.

1 public process framework for enactment of Ordinance 2287, the staff analysis of various  
2 zoning options in relation to the County's locational criteria, and the City Council's review of  
3 several options, the Board cannot conclude that the City's action was unreasoned or taken  
4 without regard and consideration of the facts and circumstances.  
5

6 The Board recognizes that some aspects of the City's conduct here might appear  
7 discriminatory. It seems unusual for a local government to go to such lengths to avoid the  
8 preferred location of a service provider for an EPF that apparently generated no community  
9 or neighborhood opposition. Nonetheless, the Board looks at the broad, objective analysis  
10 in Tukwila's staff report and concludes that the adoption of the restrictive zoning selected in  
11 the Ordinance was not arbitrary. The Board **concludes** that Petitioner failed to carry its  
12 burden to overcome the presumption of validity with respect to consideration of GMA Goal 6  
13 – Property Rights.  
14

15  
16 RCW 36.70A.020(7) is the GMA goal concerning permits:

17 (7) Permits. Applications for both state and local government permits should be  
18 processed in a timely and fair manner to ensure predictability.  
19

20 Petitioner asserts that DESC and Sleeping Tiger had the right to have DESC's application  
21 for an unclassified use permit for crisis diversion facilities in the MIC zone processed in  
22 accordance with the policies contained in Tukwila's Comprehensive Plan governing  
23 essential public facilities:

24 It was grossly unfair for Tukwila to circumvent the permit process provided in its  
25 Comprehensive Plan and zoning regulations ... to prevent DESC's siting of these  
26 facilities at the RiverSide property. Such actions were certainly incompatible with  
27 the goals of predictability and fairness required by the GMA.<sup>89</sup>

28 GMA Goal 7 emphasizes the importance of certainty in land use regulations. Any  
29 development process must be made clear for the developer from the outset, whether it be  
30 private citizens, other government agencies, non-profit or commercial ventures. The Board  
31  
32

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<sup>89</sup> Petitioner's Prehearing Brief, at 18.  
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1 has long recognized the particular applicability for GMA Goal 7 to EPF siting needs. If an  
2 EPF permit application is subject to arbitrary conditions or unpredictable processes, the  
3 facility is essentially precluded:

4       The EPF permit process may be found to be so unfair, untimely and  
5       unpredictable as to substantively violate RCW 36.70A.020(7).<sup>90</sup>

6       As a matter of necessity, determining whether an adopted regulation is  
7       preclusive brings in aspects of Goal 7, relating to processing permits in a timely,  
8       fair manner to ensure predictability.<sup>91</sup>

9       Where EPF siting is at issue, the Board has previously ruled that imposition of moratoriums  
10       followed by enactment of changed zoning and regulations frustrates the goal of certainty in  
11       permit applications. As the Board stated in *DOC III/IV v Lakewood*: "[T]he moratorium  
12       causes an unpredictable delay in the siting of the state EPF which is the equivalent to  
13       precluding the EPF."<sup>92</sup> The Board further noted: "Siting the facility in an alternative zoning  
14       district would cause delays related to finding and acquiring a site and physically establishing  
15       a facility."<sup>93</sup>

16  
17  
18       In the record before the Board in the present case, when the City learned of DESC's interest  
19       in siting crisis diversion services at the RiverSide Residences, the City launched an ad hoc  
20       process starting with moratoriums and resulting in changed zoning regulations. There was  
21       no way for DESC as potential applicant or Sleeping Tiger as property owner to know what  
22       the process would be, how long it would take, or what requirements or restrictions might  
23       ultimately be imposed. In connection with EPF siting, such action by a City "results in an  
24       unfair and unpredictable permitting process contrary to RCW 36.70A.020(7)"<sup>94</sup> and is  
25  
26  
27

28  
29 <sup>90</sup> *King County v. Snohomish County*, CPSGMHB Case No. 03-3-0011, Final Decision and Order (Oct. 13,  
2003), at 5-6.

30 <sup>91</sup> *Cascade Bicycle Club v City of Lake City*, CPSGMHB Case No. 07-3-0010c, Final Decision and Order (July  
31 23, 2007), at 13.

32 <sup>92</sup> CPSGMHB Case No. 05-3-0043c, Final Decision and Order (Feb. 25, 2008), at 15 (emphasis supplied).

<sup>93</sup> *Id.* at 18 (emphasis supplied).

<sup>94</sup> *Cascade Bicycle Club v City of Lake City*, CPSGMHB Case No. 07-3-0010c, Final Decision and Order (July  
23, 2007), at 28.

1 **clearly erroneous.** The Board concludes that the City's action was **not guided by** and  
2 **substantially interferes** with GMA Goal 7 - Permits.

3  
4 **Conclusion.** The Board finds and concludes that Sleeping Tiger has not carried its burden  
5 of demonstrating non-compliance with GMA Goal 6 - Property rights. However, the  
6 Petitioner has carried its burden of showing that the City's action was **not guided by** and, in  
7 fact, **substantially interferes** with GMA Goal 7 – Permits.  
8

9 **4. Invalidity**

10  
11 RCW 36.70A.302(1) empowers the Board to invalidate a development regulation which is  
12 found to be inconsistent with the GMA, where the Board "includes in the final order a  
13 determination, supported by findings of fact and conclusions of law, that the continued  
14 validity of part or parts of the plan or regulation would substantially interfere with the  
15 fulfillment of the goals of this chapter."  
16

17 The Board has found that the City of Tukwila's adoption of Ordinance No. 2287 does not  
18 comply with the essential public facilities requirements of the Act, specifically, RCW  
19 36.70A.200(1) and (5). The noncompliant Ordinance is remanded to the City in this Order.  
20 Since the Board's finding of noncompliance relates to the nature of the process for siting the  
21 EPF, the Board's consideration of invalidity focuses on Goal 7, which provides:  
22

23 Permits. Applications for both state and local government permits should be  
24 processed in a timely and fair manner to ensure predictability.<sup>95</sup>

25 In the Board's discussion and analysis, the Board determined that the City's failure to act  
26 consistently with the process for siting EPFs set forth in its Comprehensive Plan, followed  
27 by its subsequent revisions to its development regulations, resulted in a permit process that  
28  
29  
30  
31  
32

1 is not timely, fair or predictable. The continued validity of Ordinance 2287 would continue to  
2 frustrate timeliness and predictability.<sup>96</sup>

3  
4 Based upon the findings of fact and the Board's finding of noncompliance with RCW  
5 36.70A.200, the Board concludes that Ordinance No. 2287 **substantially interferes** with  
6 the fulfillment of Goal 7. The Board hereby enters a **determination of invalidity** for City of  
7 Tukwila Ordinance 2287.

8  
9 **Conclusions re: Invalidity:** The Board has found that the City of Tukwila's adoption of  
10 Ordinance 2287 is **noncompliant** with RCW 36.70A.200. The Board finds and concludes  
11 that the continued validity of Ordinance 2287 would substantially interfere with the fulfillment  
12 of GMA Goal 7 – RCW 36.70A.020(7). Therefore the Board enters a **determination of**  
13 **invalidity** for Ordinance 2287.

#### 14 15 16 **V. ORDER**

17 Based upon review of the Petition for Review, the briefs and exhibits submitted by the  
18 parties, the GMA, prior Board orders and case law, having considered the arguments of the  
19 parties and having deliberated on the matter, the Board ORDERS:

- 20 1) Petitioner Sleeping Tiger has failed to carry the burden of proof in demonstrating  
21 that the City of Tukwila's adoption of Ordinance No. 2287 was not guided by RCW  
22 36.70A,020(6) Property rights. Petitioner's allegations pertaining to GMA Planning  
23 Goal 6 are **dismissed**.  
24  
25 2) Petitioner Sleeping Tiger **abandoned** its challenge to Ordinance No. 2288 and its  
26 allegations of non-compliance with RCW 36.70A.100 and .150. These allegations  
27 are **dismissed**.  
28  
29 3) The City of Tukwila's adoption of Ordinance No. 2287 was **clearly erroneous** and  
30 **does not comply** with the requirements of RCW 36.70A.200(1) and (5)

31  
32 <sup>96</sup> Already three Petitions for Review have been filed with the Board by either the project proponent or the  
property owner since the proponent's first inquiry to the City about permit application in 2009. The first  
moratorium was passed September 8, 2009.

1 concerning siting and accommodating essential public facilities and with the  
2 consistency requirements of RCW 36.70A.040(3) and RCW 36.70A.070  
3 (preamble) and **was not guided by** GMA Goal 7 Permits – RCW 36.70A.020(7).

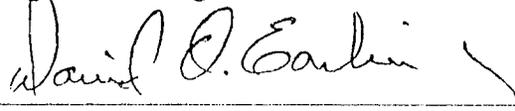
- 4) The Board **remands** Ordinance No. 2287 to the City of Tukwila to take legislative  
5 action to comply with the requirements of the GMA as set forth in this Order.  
6  
7) The continued validity of Ordinance 2287 substantially interferes with the  
8 fulfillment of GMA Goal 7 - RCW 36.70A.020(7). Therefore the Board enters a  
9 **determination of invalidity** with respect to Ordinance No. 2287.  
10) The Board sets the following schedule for the City's compliance:

Item	Date Due
Compliance Due	May 10, 2011
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	May 24, 2011
Objections to a Finding of Compliance	June 7, 2011
Response to Objections	June 14, 2011
Compliance Hearing – Location to be determined	June 21, 2011 10:00 a.m.

19 DATED this 4th day of January 2011.



Margaret A. Pageler, Board Member



David A. Earling, Board Member



Nina Carter, Board Member

1 Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party  
2 files a motion for reconsideration pursuant to WAC 242-02-832.<sup>97</sup>  
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21  
22 <sup>97</sup> Pursuant to RCW 36.70A.300 this is a final order of the Board.

23 Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to  
24 file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any  
25 argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original  
26 and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of  
27 record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240,  
28 WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial  
29 review.

30 Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as  
31 provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior  
32 court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement.  
The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the  
Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW  
34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means  
actual receipt of the document at the Board office within thirty days after service of the final order. A petition for  
judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

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# **B**

## **TUKWILA CRISIS DIVERSION FACILITIES MORATORIUM (NO. 2248)**

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# City of Tukwila

Washington

Ordinance No. 2248

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, RELATING TO DIVERSION FACILITIES AND DIVERSION INTERIM SERVICE FACILITIES FOR THE TREATMENT OF MENTALLY ILL AND CHEMICALLY-DEPENDENT ADULTS IN CRISIS, ADOPTING A SIX-MONTH MORATORIUM ON ESTABLISHING SUCH USES, AND ON THE ACCEPTANCE AND/OR PROCESSING OF APPLICATIONS RELATED THERETO; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Tukwila has the authority to adopt a moratorium pursuant to RCW 35A.63.220; and

WHEREAS, in recent weeks, several communities in South King County have been approached by certain entities to allow crisis diversion facilities and crisis diversion interim service facilities in the city; and

WHEREAS, the programs run in these facilities target mentally ill and chemically-dependent adults in crisis who might otherwise be brought to a hospital emergency department or arrested for minor crimes and taken to jail; and

WHEREAS, these facilities have varying lengths of stays for its consumers generally ranging from less than 24 hours to two weeks or longer; and

WHEREAS, although these facilities are licensed by the Department of Health as Residential Treatment Facilities and by the Department of Social and Health Services, Mental Health Division, as Adult Residential Treatment Facilities, the use is inconsistent with residentially-zoned uses; and

WHEREAS, the Tukwila Municipal Code does not currently have a specific provision addressing the use of property for these types of facilities; and

WHEREAS, the Tukwila City Council has determined it is in the best interest of the City to prevent major investment and/or vesting of rights that conflict with the Comprehensive Plan and the City's intent to carefully and thoroughly plan for and provide appropriate development regulations; and

WHEREAS, the Tukwila City Council has determined that City staff should work to prepare options for zoning regulations for the City Council's consideration; and

WHEREAS, as required by RCW 35A.63.220, the Tukwila City Council will hold a public hearing within 60 days of the passage of this ordinance; and

WHEREAS, the potential adverse impacts on the public health, property, safety and welfare of the City and its residents, as discussed, justify the declaration of an emergency;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:**

**Section 1. Moratorium Imposed.** The City hereby imposes a moratorium upon the receipt and processing of building permit applications, land use applications, and any other permit application for diversion facilities and diversion interim service facilities.

**Section 2. Public Hearing.** Pursuant to RCW 35A.63.220, a public hearing will be held by November 8, 2009 for the purpose of adopting findings and conclusions in support of the provisions of this ordinance.

**Section 3. Duration.** The moratorium imposed hereunder shall be in effect until March 8, 2010, unless extended by the City Council pursuant to State law

**Section 4. Severability** If any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation should be held to be invalid, unconstitutional or unenforceable for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

**Section 5 Declaration of Emergency - Effective Date.** For the reasons set forth above, and to promote the objectives stated herein, the City Council finds that a public emergency exists, necessitating that this ordinance take effect immediately upon its passage by a majority plus one of the whole membership of the Council in order to protect the public health, safety, property, and general welfare. This ordinance shall take effect and be in full force immediately upon passage by the City Council. A summary of this ordinance may be published in lieu of publishing the ordinance in its entirety

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Regular Meeting thereof this 8<sup>TH</sup> day of September, 2009

ATTEST/AUTHENTICATED:

Christy O'Flaherty  
Christy O'Flaherty, CMC, City Clerk

Jim Haggerton  
Jim Haggerton, Mayor

APPROVED AS TO FORM BY

[Signature]  
Office of the City Attorney

Filed with the City Clerk: 9-2-09  
Passed by the City Council: 9-8-09  
Published: 9-14-09  
Effective Date: 9-8-09  
Ordinance Number: 2248

SUMMARY OF  
Ordinance No 2248

City of Tukwila, Washington

On September 8, 2009 the City Council of the City of Tukwila, Washington, adopted Ordinance No 2248, the main points of which are summarized by its title as follows

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, RELATING TO DIVERSION FACILITIES AND DIVERSION INTERIM SERVICE FACILITIES FOR THE TREATMENT OF MENTALLY ILL AND CHEMICALLY-DEPENDENT ADULTS IN CRISIS, ADOPTING A SIX-MONTH MORATORIUM ON ESTABLISHING SUCH USES, AND ON THE ACCEPTANCE AND/OR PROCESSING OF APPLICATIONS RELATED THERETO; PROVIDING FOR SEVERABILITY, AND DECLARING AN EMERGENCY AND ESTABLISHING AN EFFECTIVE DATE.**

The full text of this ordinance will be mailed upon request.

Approved by the City Council at a Regular Meeting thereof on September 8, 2009

  
\_\_\_\_\_  
Christy O'Flaherty, CMC, City Clerk

Published Seattle Times September 14, 2009

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# C

## **TUKWILA'S CRISIS DIVERSION FACILITIES ORDINANCE (NO. 2287) (relevant portions only)**

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# City of Tukwila

Washington

Ordinance No. 2287

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, AMENDING VARIOUS ORDINANCES, AS CODIFIED AT TUKWILA MUNICIPAL CODE TITLE 18, "ZONING CODE," TO INCORPORATE DEFINITIONS OF DIVERSION FACILITY AND DIVERSION INTERIM SERVICES FACILITY; TO CLARIFY DEFINITIONS OF CONVALESCENT NURSING HOME, OUTPATIENT MEDICAL CLINIC AND HOSPITAL; TO DELETE THE DEFINITION OF SANITARIUM; AND TO UPDATE THE ZONING CODE AND ITS PROVISIONS FOR SUCH USES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, in October 2007, the King County Council passed Motion 12598, adopting the Mental Illness and Drug Dependency (MIDD) Action Plan, whose goal was "to prevent and reduce chronic homelessness and prevent and reduce unnecessary involvement in the criminal justice and emergency medical systems, and promote recovery for persons with disability mental illness or drug dependency by implementing a full continuum of treatment, housing and case management services"; and

WHEREAS, in November 2007, the King County Council adopted Ordinance No. 15949, which increased King County's sales tax by one-tenth of a percent. The funds raised by the sales tax increase are intended to pay for the programs outlined in the MIDD Action Plan; and

WHEREAS, one of the strategies of the MIDD Action Plan is the funding and operation of a crisis diversion program in King County, which will be available to individuals who are in mental illness and/or chemical dependency crisis; and

WHEREAS, King County has noted the importance of a crisis diversion program in order to provide services and treatment for people suffering from mental illness and/or chemical dependency; and

WHEREAS, King County's Crisis Diversion Program will accept individuals from hospitals, emergency rooms, ambulances and police agencies throughout King County; and

WHEREAS, King County has stated that 50 percent of the individuals using the Crisis Diversion Program will be Police diversions from throughout King County; and

WHEREAS, King County has noted the importance of a centralized location for these facilities so that police agencies throughout King County are able to easily transport individuals to and from the facilities; and

WHEREAS, in August 2009, King County issued a request for proposal soliciting proposals from third parties to operate a crisis diversion facility and a crisis diversion interim service facility; both facilities are part of the Crisis Diversion Program; and

WHEREAS, the City's Zoning Code does not address the operation of crisis diversion facilities or crisis diversion interim service facilities; and

WHEREAS, on September 8, 2009, the Tukwila City Council passed Ordinance No. 2248, which adopted a six-month moratorium on the acceptance and processing of applications to establish and operate crisis diversion and crisis diversion interim service facilities within the City in order to allow City staff time to study the County's proposed plans and develop a process for siting these facilities within the City; and

WHEREAS, the City of Tukwila filed two public records requests with King County for all documents related to the development of the Crisis Diversion Program, crisis diversion facilities and crisis diversion interim service facilities; and

WHEREAS, the City of Tukwila also filed public records request with the cities of Seattle and Bellevue for information regarding the Crisis Diversion Program; and

**WHEREAS**, as result of these public records requests, City staff reviewed over 1,000 pages of documents regarding the MIDD plan and the Crisis Diversion Program. These documents provided considerable background regarding the proposed program; and

**WHEREAS**, City staff met with King County staff on October 21, 2010 to be briefed on the County's proposed program; and

**WHEREAS**, on November 2, 2010, the City Council held a public hearing on its adopted moratorium and heard testimony from King County employees and members of the MIDD Oversight Committee on the importance of the proposed Crisis Diversion Program and related facilities; and

**WHEREAS**, on November 16, 2009, City staff met with King County staff to further discuss issues associated with the County's proposed Crisis Diversion Program; and

**WHEREAS**, on November 19, 2009, City staff attended the monthly meeting of the MIDD Oversight Committee in order to gain more information about the needs of the County's proposed program; and

**WHEREAS**, on December 17, 2009, Tukwila staff, along with staff from the cities of Burien, SeaTac, Renton and Seattle, met with King County to discuss the proposed Crisis Diversion Program and related facilities; and

**WHEREAS**, on December 29, 2010, City staff met with the King County Executive's Office to further discuss the County's proposed program; and

**WHEREAS**, on January 5, 2010, the City of Tukwila hosted a meeting with south King County cities and the King County Prosecuting Attorney's Office to further discuss to the County's proposed crisis diversion services program; and

**WHEREAS**, on January 26, 2010, City staff again met with the King County's Executive's Office to further discuss the County's proposed program; and

**WHEREAS**, on January 28, 2010, City staff attended the January meeting of the MIDD Oversight Committee to continue to learn about the County's Crisis Diversion Program; and

**WHEREAS**, the City desires to accommodate King County's Crisis Diversion Program, while also ensuring compliance with the City's Comprehensive Plan and King County Countywide Planning Policies; and

**WHEREAS**, the Zoning Code of the City of Tukwila establishes permit processes for various uses and the City wishes to expand those procedures to include crisis diversion facilities and crisis diversion interim facilities; and

**WHEREAS**, given the unique nature of crisis diversion facilities, it is important to clarify the definitions of hospital, outpatient medical facilities and nursing homes; and

**WHEREAS**, the Tukwila City Council shares King County's concerns that people with mental illness and/or chemical dependency issues should not be criminalized or stigmatized because of their current state; and

**WHEREAS**, on February 12, 2010, the Director of Community Development determined the proposed code changes do not have a probable significant adverse impact on the environment and issued a Determination of Non-Significance; and

**WHEREAS**, on February 12, 2010, as required by the Growth Management Act, the City filed notice with the Washington State Department of Commerce that the City intended to modify its Zoning Code; and

**WHEREAS**, on February 25, 2010, City staff attended the February meeting of the MIDD Oversight Committee to gain information on needs of the County's proposed Crisis Diversion Program; and

**WHEREAS**, on February 25, 2010, the City Council, utilizing the Council's authority under TMC Section 18.80.020, referred the proposed code changes to the Tukwila Planning Commission for their review, consideration and recommendation; and

**WHEREAS**, on February 25, 2010, the Tukwila Planning Commission, following public notice, held a public hearing to receive testimony concerning amending the Zoning Code and adopted a motion recommending the proposed changes; and

**WHEREAS**, at the February 25, 2010 Tukwila Planning Commission meeting, the Planning Commission received and reviewed a staff report dated February 18, 2010, which evaluated the proposed crisis diversion facility and crisis diversion interim service facility location criteria against the characteristics of various Tukwila neighborhoods; and

**WHEREAS**, on March 8, 2010, the Community Affairs and Parks Committee of the Tukwila City Council considered the proposed code change recommended by the Tukwila Planning

Commission and forwarded the proposed changes to the City Council for review and consideration; and

WHEREAS, on March 11, 2010, King County re-released portions of the RFP soliciting vendors to respond to King County's requests to operate a crisis diversion facility in King County; the RFP included additional information, clarifying and changing the needs of the proposed facilities; and

WHEREAS, on March 15, 2010, the Tukwila City Council was briefed on King County's Crisis Diversion Program and the proposed code changes recommended by the Planning Commission; and

WHEREAS, King County has provided clarity to the City regarding the need for transit near crisis diversion facilities and crisis diversion interim service facilities; and

WHEREAS, on April 12, 2010, the Tukwila City Council, following public notice, held a public hearing to receive testimony concerning the recommendations of the Planning Commission; and

WHEREAS, given the important nature of these facilities and to ensure the City Council has needed information regarding the operation of crisis diversion facilities and crisis diversion interim service facilities, the City Council continued the public hearing to the May 3 and May 17, 2010 Tukwila City Council meetings; and

WHEREAS, during the public hearing, the City Council heard testimony from providers with specific knowledge of the operation of crisis diversion programs. These providers testified that these crisis diversion facilities should not be placed in crowded, commercial areas, that the crisis diversion facility would not be a compelled facility, and that police would be called if a police diversion wishes to leave the facility against the advice of staff; and

WHEREAS, on May 3, 2010, pursuant to its authority under TMC Section 18.80.060, the City Council indicated a desire to modify the proposal forwarded by the Planning Commission and made a motion requesting that City staff examine the West Valley Highway area of the City to determine if the area met King County's criteria; and

WHEREAS, West Valley Highway was specifically called out as a desired route to have access from in King County's RFP; and

WHEREAS, the West Valley Highway area has easy access to Interstate 5, Interstate 405, and State Route 167; and

WHEREAS, the West Valley Highway area has the needed mass transit, as outlined by King County staff; and

WHEREAS, the West Valley Highway area meets all of the location criteria established by King County for these facilities; and

WHEREAS, the 24-hour nature of crisis diversion facilities makes these facilities incompatible with residentially-zoned neighborhoods; and

WHEREAS, the area proposed for the Crisis Diversion Program is zoned commercial/light industrial, in which permanent residential uses are excluded from the zoning; and

WHEREAS, the Tukwila City Council has reviewed the staff report with supporting attachments, dated February 18, 2010, and the recommendation of the Planning Commission; and

WHEREAS, the SEPA Responsible Official has issued an addendum to the February 12, 2010 Determination of Non-Significance; and

WHEREAS, the Tukwila City Council has reviewed a revised staff report dated May 12, 2010; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:**

**Section 1. Definition Added.** A new definition is added to TMC Chapter 18.06 to read as follows:

*"Diversion facility"* is a facility that provides community crisis services, which diverts people from jails, hospitals or other treatment options due to mental illness or chemical dependency, including those facilities licensed as crisis stabilization units by the State of Washington.

**Section 2. Definition Added.** A new definition is added to TMC Chapter 18.06 to read as follows:

*"Diversion interim services facility"* is a facility that provides interim or respite services, such as temporary shelter, medical mental health treatment, case management or other support

options such as transportation arrangements for patients who are referred to such a facility from a diversion facility.

**Section 3. Ordinance Amended.** Ordinance No. 1758 §1, as codified at TMC Section 18.06.150, is amended to read as follows:

*"Outpatient medical clinic"* means a building designed and used for the medical, dental and surgical diagnosis and treatment of patients under the care of doctors and nurses and/or practitioners and does not include overnight care facilities. This category does not include diversion facility or diversion interim services facility.

**Section 4. Ordinance Amended.** Ordinance No. 1976 §13, as codified at TMC Section 18.06.173, is amended to read as follows:

*"Convalescent/nursing home"* means a residential facility, such as a hospice, offering 24-hour skilled nursing care for patients suffering from an illness, or receiving care for chronic conditions, mental or physical disabilities or alcohol or drug detoxification, excluding correctional facilities. Care may include in-patient administration of special diets, bedside nursing care and treatment by a physician or psychiatrist. The stay in a convalescent/nursing home is in excess of 24 consecutive hours. This category does not include diversion facility or diversion interim services facility.

**Section 5. Ordinance Amended.** Ordinance No. 1758 §1, as codified at TMC Section 18.06.435, is amended to read as follows:

*"Hospital"* means a building requiring a license pursuant to Chapter 70.41 RCW and used for the medical and surgical diagnosis, treatment and housing of persons under the care of doctors and nurses. Rest homes, nursing homes, convalescent homes, diversion facility/diversion interim services facility and outpatient medical clinics are not included.

**Section 6. Ordinance Amended.** Ordinance No. 1758 §1, as codified at TMC Section 18.06.700, is amended to delete the definition for "Sanitarium."

**Section 7. Ordinances Amended.** Ordinance Nos. 2097 §9, 1986 §5, 1976 §28, 1971 §7, 1830 §5, 1814 §2 and 1758 §1, as codified at TMC Section 18.16.020, are amended to read as follows:

**18.16.020 Permitted Uses.** The following uses are permitted outright within the Mixed-Use Office District, subject to compliance with all other applicable requirements of the Tukwila Municipal Code.

1. Animal veterinary, including associated temporary indoor boarding; access to an arterial required.
2. Beauty or barber shops.
3. Bicycle repair shops.
4. Billiard or pool rooms.
5. Brew pubs.
6. Commercial parking; provided it is:
  - a. located within a structure having substantial ground floor retail or commercial activities and designed such that the pedestrian and commercial environments are not negatively impacted by the parking use; or
  - b. located at least 175 feet from adjacent arterial streets and behind a building that, combined with appropriate Type III landscaping, provides effective visual screening from adjacent streets.
7. Computer software development and similar uses.
8. Convalescent and nursing homes for not more than 12 patients.
9. Daycare centers.
10. Dwelling - one detached single-family dwelling per existing lot.
11. Dwelling - multi-family units above office and retail uses.
12. Dwelling - senior citizen housing as a freestanding use subject to additional requirements.
13. Financial, banking, mortgage and other services.
14. Fraternal organizations.
15. Laundries:
  - a. self service
  - b. dry-cleaning
  - c. tailor, dyeing
16. Libraries, museums or art galleries (public).

**Section 21. Ordinances Amended.** Ordinance Nos. 2135 §13, 1865 §36, 1830 §24 and 1758 §1, as codified at TMC Section 18.30.040, are amended to read as follows:

**18.30.040 Conditional Uses.** The following uses may be allowed within the Commercial Light Industrial District, subject to the requirements, procedures and conditions established by the Conditional Use Permits chapter of this title:

1. Amusement parks.
2. Animals shelters and kennels, subject to all additional State and local regulations (less than four cats or dogs does not need a permit).
3. Cemeteries and crematories.
4. Religious facility with an assembly area greater than 750 square feet and community center buildings.
5. Colleges and universities.
6. Convalescent and nursing homes for more than 12 patients.
7. Drive-in theaters.
8. Electrical substations - distribution.
9. Fire and police stations.
10. Hospitals.
11. Manufacturing, processing and/or assembling chemicals, light metals, plastics, solvents, soaps, wood, coal, glass, enamels, textiles, fabrics, plaster, agricultural products or animal products (no rendering or slaughtering).
12. Manufacturing, processing and/or assembling of previously manufactured metals, such as iron and steel fabrication; steel production by electric arc melting, argon oxygen refining, and consumable electrode melting; and similar heavy industrial uses.
13. Manufacturing, processing and/or assembling previously prepared metals, including, but not limited to, stamping, dyeing, shearing or punching of metal, engraving, galvanizing and hand-forging.
14. Park-and-ride lots.
15. Radio, television, microwave or observation stations, and towers.
16. Recreation facilities (commercial - outdoor), including golf courses, golf driving ranges, fairgrounds, animal race tracks, sports fields.
17. Recreation facilities (public), including, but not limited to, sports fields, community centers and golf courses.
18. Rock crushing, asphalt or concrete batching or mixing, stone cutting, brick manufacture, marble work and the assembly of products from the above materials.

**Section 22. Ordinances Amended.** Ordinance Nos. 1991 §5, 1976 §53, and 1758 §1, as codified at TMC Section 18.30.050, are amended to read as follows:

**18.30.050 Unclassified Uses.** The following uses may be allowed within the Commercial/Light Industrial District, subject to the requirements, procedures and conditions established in TMC Chapter 18.66, Unclassified Use Permits.

1. Airports, landing fields and heliports (except emergency sites).
2. Cement manufacturing.
3. Essential public facilities, except those uses listed separately in any of the districts established by this title.
4. Hydro-electric and private utility power generating plants.
5. Landfills and excavations which the responsible official, acting pursuant to the State Environmental Policy Act, determines are significant environmental actions.
6. Removal and processing of sand, gravel, rock, peat, black soil and other natural deposits, together with associated structures.
7. Mass transit facilities.
8. Diversion facilities and diversion interim service facilities, provided they are located south of Strander Boulevard.

**Section 23. Ordinances Amended.** Ordinance Nos. 2021 §6, 1986 §11, 1974 §7, 1971 §14, 1814 §2, 1774 §1 and 1758 §1, as codified at TMC Section 18.32.020, are amended to read as follows:

**18.32.020 Permitted Uses.** The following uses are permitted outright within the Light Industrial District, subject to compliance with all other applicable requirements of the Tukwila Municipal Code:

unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

**Section 33. Effective Date.** This ordinance or a summary thereof shall be published in the official newspaper of the City, and shall take effect and be in full force five days after passage and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Regular Meeting thereof this 17<sup>TH</sup> day of May, 2010.

ATTEST/AUTHENTICATED:

Christy O'Flaherty  
Christy O'Flaherty, CMC, City Clerk

Jim Haggerton  
Jim Haggerton, Mayor

APPROVED AS TO FORM BY:

[Signature]  
Office of the City Attorney

Filed with the City Clerk: 5-10-10  
Passed by the City Council: 5-17-10  
Published: 5-20-10  
Effective Date: 5-25-10  
Ordinance Number: 2287

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# D

## TUKWILA'S MIC ZONING CODE (TMC 18.38)

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## CHAPTER 18.38

MANUFACTURING/INDUSTRIAL CENTER -  
HEAVY (MIC/H) DISTRICT

## Sections:

- 18.38.010 Purpose
- 18.38.020 Permitted Uses
- 18.38.030 Accessory Uses
- 18.38.040 Conditional Uses
- 18.38.050 Unclassified Uses
- 18.38.060 On-Site Hazardous Substances
- 18.38.070 Design Review
- 18.38.080 Basic Development Standards

**18.38.010 Purpose**

This district implements the Manufacturing Industrial Center/Heavy Industrial Comprehensive Plan designation. It is intended to provide a major employment area containing heavy or bulk manufacturing and industrial uses, distributive and light manufacturing and industrial uses, and other uses that support those industries. This district's uses and standards are intended to enhance the redevelopment of the Duwamish Corridor.

*(Ord. 1758 §1(part), 1995)*

**18.38.020 Permitted Uses**

The following uses are permitted outright within the Manufacturing Industrial Center - Heavy Industrial district, subject to compliance with all other applicable requirements of the Tukwila Municipal Code.

1. Adult entertainment establishments are permitted, subject to the following location restrictions:

a. No adult entertainment establishment shall be allowed within the following distances from the following specified uses, areas or zones, whether such uses, areas or zones are located within or outside the City limits:

(1) In or within 1,000 feet of any LDR, MDR, HDR, MUO, O, NCC, RC, RCM or TUC zone districts or any other residentially zoned property;

(2) In or within 1/2 mile of:

(a) Public or private school with curricula equivalent to elementary, junior or senior high schools, or any facility owned or operated by such schools, and

(b) Care centers, preschools, nursery schools or other child care facilities;

(3) In or within 1,000 feet of:

(a) public library;

(b) public park, trail, or public recreational facility; or

(c) religious facility.

b. The distances specified in TMC 18.38.020.1.a. shall be measured by following a straight line from the nearest point of the property parcel upon which the proposed use is to be located, to the nearest point of the parcel of property or land use district boundary line from which the proposed land use is to be separated.

c. No adult entertainment establishment shall be allowed to locate within 1,000 feet of an existing adult entertainment establishment. The distance specified in this section shall be measured by following a straight line between the nearest points of public entry into each establishment.

2. Automotive services:

a. gas, outside pumps allowed;

b. washing;

c. body and engine repair shops (enclosed within a building).

3. Beauty or barber shops.

4. Bicycle repair shops.

5. Brew pubs.

6. Bus stations.

7. Computer software development and similar uses.

8. Contractor storage yards.

9. Day care centers.

10. Extended-stay hotel/motel.

11. Financial:

a. banking;

b. mortgage;

c. other services.

12. Heavy equipment repair and salvage.

13. Heavy metal processes such as smelting, blast furnaces, drop forging, or drop hammering.

14. Hotels.

15. Industries involved with etching, film processing, lithography, printing, and publishing.

16. Internet data/telecommunication centers.

17. Laundries:

a. self-serve;

b. dry cleaning;

c. tailor, dyeing.

18. Libraries, museums or art galleries (public).

19. Manufacturing, processing and/or assembling chemicals, light metals, plastics, solvents, soaps, wood, coal, glass, enamels, textiles, fabrics, plaster, agricultural products or animal products (no rendering or slaughtering).

20. Manufacturing, processing and/or assembling of previously manufactured metals, such as iron and steel fabrication; steel production by electric arc melting, argon oxygen refining, and consumable electrode melting; and similar heavy industrial uses.

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21. Manufacturing, processing and/or assembling previously prepared metals including, but not limited to, stamping, dyeing, shearing or punching of metal, engraving, galvanizing and hand-forging.

22. Manufacturing, processing and/or assembling of electrical or mechanical equipment, vehicles and machines including, but not limited to, heavy and light machinery, tools, airplanes, boats or other transportation vehicles and equipment.

23. Manufacturing, processing and/or packaging of food, including but not limited to, baked goods, beverages (including fermenting and distilling), candy, canned or preserved foods, dairy products and byproducts, frozen foods, instant foods and meats (provided that no slaughtering is permitted).

24. Manufacturing, processing and/or packaging pharmaceuticals and related products, such as cosmetics and drugs.

25. Manufacturing, processing, and/or packaging previously prepared materials including, but not limited to, bags, brooms, brushes, canvas, clay, clothing, fur, furniture, glass, ink, paint, paper, plastics, rubber, tile, and wood.

26. Manufacturing, processing, assembling, packaging and/or repairing electronic, mechanical or precision instruments such as medical and dental equipment, photographic goods, measurement and control devices, and recording equipment.

27. Motels.

28. Offices; must be associated with another permitted uses (e.g., administrative offices for a manufacturing company present within the MIC).

29. Outpatient, inpatient, and emergency medical and dental.

30. Parks, trails, picnic areas and playgrounds (public) but not including amusement parks, golf courses, or commercial recreation.

31. Railroad tracks (including lead, spur, loading or storage).

32. Recreation facilities (commercial - indoor), athletic or health clubs.

33. Rental of vehicles not requiring a commercial driver's license (including automobiles, sport utility vehicles, mini-vans, recreational vehicles, cargo vans and certain trucks).

34. Rental of commercial trucks and fleet rentals requiring a commercial driver's license.

35. Restaurants, including:

- a. drive-through;
- b. sit down;
- c. cocktail lounges in conjunction with a restaurant.

36. Rock crushing, asphalt or concrete batching or mixing, stone cutting, brick manufacture, marble work, and the assembly of products from the above materials.

37. Sales and rental of heavy machinery and equipment subject to landscaping requirements of the Landscape, Recreation, Recycling/Solid Waste Space Requirements chapter of this title.

38. Salvage and wrecking operations.

39. Schools and studios for education or self-improvement.

40. Self-storage facilities.

41. Storage (outdoor) of materials is permitted up to a height of 20 feet with a front yard setback of 25 feet, and to a height of 50 feet with a front yard setback of 100 feet; security required.

42. Storage (outdoor) of materials allowed to be manufactured or handled within facilities conforming to uses under this chapter, and screened pursuant to the Landscape, Recreation, Recycling/Solid Waste Space Requirements chapter of this title.

43. Taverns, nightclubs.

44. Telephone exchanges.

45. Tow truck operations, subject to all additional State and local regulations.

46. Truck terminals.

47. Warehouse storage and/or wholesale distribution facilities.

48. Other uses not specifically listed in this title, which the Director determines to be:

- a. similar in nature to and compatible with other uses permitted outright within this district; and
- b. consistent with the stated purpose of this district; and
- c. consistent with the policies of the Tukwila Comprehensive Plan.

*(Ord. 2251 §52, 2009; Ord. 2235 §7, 2009;*

*Ord. 2021 §9, 2003; Ord. 1986 §14, 2001;*

*Ord. 1974 §10, 2001; Ord. 1971 §16, 2001;*

*Ord. 1814 §2, 1997; Ord. 1774 §4, 1996;*

*Ord. 1758 §1(part), 1995.)*

### 18.38.030 Accessory Uses

Uses and structures customarily appurtenant to a permitted use, and clearly incidental to such permitted use, are allowed within the Manufacturing Industrial Center/Heavy Industrial District, as follows:

1. Billiard or pool rooms.
2. Dormitory as an accessory use to other uses that are otherwise permitted or approved conditional uses such as universities, colleges or schools.
3. Parking areas.
4. Recreational area and facilities for employees.
5. Residences for security or maintenance personnel.

6. Other uses not specifically listed in this title, which the Director determines to be:

- a. uses that are customarily accessory to other uses permitted outright within this district; and
- b. consistent with the stated purpose of this district; and
- c. consistent with the policies of the Tukwila Comprehensive Plan.

*(Ord. 2251 §53, 2009; Ord. 1976 §57, 2001; Ord. 1758 §1(part), 1995)*

#### 18.38.040 Conditional Uses

The following uses may be allowed within the Manufacturing Industrial Center/Heavy Industrial District, subject to the requirements, procedures, and conditions established by the Conditional Use Permits chapter of this title.

1. Colleges and universities.
2. Electrical substations - distribution.
3. Fire and police stations.
4. Hazardous waste treatment and storage facilities (off-site) subject to compliance with State siting criteria *(RCW 70.105; see TMC Chapter 21.08)*.
5. Offices not associated with other permitted uses, subject to the following location and size restrictions:
  - a. New Office Developments:
    - (1) New office developments shall not exceed 100,000 square feet of gross floor area per lot that was legally established prior to 09/20/2003.
    - (2) No new offices shall be allowed on lots that abut the Duwamish River and are north of the turning basin. The parcels that are ineligible for stand-alone office uses are shown in *Figure 18-12*.
  - b. An existing office development established prior to 12/11/1995 (the effective date of the Comprehensive Plan) that exceeds the maximum size limitations, may be recognized as a conforming Conditional Use under the provisions of this code. An existing office development established prior to 12-11-1995 (the effective date of the Comprehensive Plan) may convert to a stand-alone office use subject to the provisions of this code.
6. Park and ride lots.
7. Radios, television, microwave, or observation stations and towers.
8. Recreation facilities (public) including, but not limited to, sports fields, community centers, and golf courses.
9. Retail sales of health and beauty aids, prescription drugs, food, hardware, notions, crafts and craft supplies, housewares, consumer electronics, photo equipment, and film processing, books, magazines, stationery, clothing, shoes, flowers, plants, pets, jewelry, gifts, recreation equipment and sporting goods, and similar

items; limited to uses of a type and size that clearly intend to serve other permitted uses and/or the employees of those uses.

*(Ord. 2135 §17, 2006; Ord. 2028 §2, 2005; Ord. 1865 §44, 1999; Ord. 1758 §1(part), 1995)*

#### 18.38.050 Unclassified Uses

The following uses may be allowed within the Manufacturing Industrial Center/Heavy Industrial District, subject to the requirements, procedures and conditions established by TMC Chapter 18.66, Unclassified Use Permits.

1. Airports, landing fields and heliports (except emergency sites).
2. Cement manufacturing.
3. Correctional institution.
4. Electrical substation - transmission/ switching.
5. Essential public facilities, except those uses listed separately in any of the districts established by this title.
6. Hydroelectric and private utility power generating plants.
7. Landfills and excavations which the responsible official, acting pursuant to the State Environmental Policy Act, determines are significant environmental actions.
8. Manufacturing, refining, or storing highly volatile noxious or explosive products (less than tank car lots) such as acids, petroleum products, oil or gas, matches, fertilizer or insecticides; except for accessory storage of such materials.
9. Mass transit facilities.
10. Railroad freight or classification yards.
11. Removal and processing of sand, gravel, rock, peat, black soil, and other natural deposits together with associated structures.
12. Secure community transition facility, subject to the following location restrictions:
  - a. No secure community transition facility shall be allowed within the specified distances from the following uses, areas or zones, whether such uses, areas or zones are located within or outside the City limits:
    - (1) In or within 1,000 feet of any residential zone.
    - (2) Adjacent to, immediately across a street or parking lot from, or within the line of sight of a "risk potential activity/facility" as defined in RCW 71.09.020 as amended, that include:
      - (a) Public and private schools;
      - (b) School bus stops;
      - (c) Licensed day care and licensed preschool facilities;
      - (d) Public parks, publicly dedicated trails, and sports fields;

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- (e) Recreational and community centers;
- (f) Churches, synagogues, temples and mosques; and
- (g) Public libraries.

(3) One mile from any existing secure community transitional facility or correctional institution.

b. No secure community transition facility shall be allowed on any isolated parcel which is otherwise considered eligible by applying the criteria listed under TMC 18.38.050-12.a, but is completely surrounded by parcels ineligible for the location of such facilities.

c. The distances specified in TMC 18.38.050-12.a shall be measured as specified under Department of Social and Health Services guidelines established pursuant to RCW 71.09.285, which is by following a straight line from the nearest point of the property parcel upon which the secure community transitional facility is to be located, to the nearest point of the parcel of property or land use district boundary line from which the proposed land use is to be separated.

d. The parcels eligible for the location of secure community transition facilities by applying the siting criteria listed above and information available as of August 19, 2002, are shown in Figure 18-11, "Eligible Parcels for Location of Secure Community Transition Facilities." Any changes in the development pattern and the location of risk sites/facilities over time shall be taken into consideration to determine if the proposed site meets the siting criteria at the time of the permit application.

13. Transfer stations (refuse and garbage) when operated by a public agency.

*(Ord. 1991 §9, 2002; Ord. 1976 §58, 2001; Ord. 1865 §45, 1999; Ord. 1758 §1(part), 1995)*

**18.38.060 On-Site Hazardous Substances**

No on-site hazardous substance processing and handling, or hazardous waste treatment and storage facilities shall be permitted, unless clearly incidental and secondary to a permitted use. On-site hazardous waste treatment and storage facilities shall be subject to the State siting criteria (RCW 70.105).

*(See TMC Chapter 21.08.)*

*(Ord. 1758 §1(part), 1995)*

**18.38.070 Design Review**

Administrative design review is required for new developments within 300 feet of residential districts or within 200 feet of the Green/Duwamish River.

**18.38.080 Basic Development Standards**

Development within the Manufacturing Industrial Center/Heavy Industrial District shall conform to the following listed and referenced standards:

**MIC/H BASIC DEVELOPMENT STANDARDS**

Setbacks to yards, minimum:	
• Front	20 feet
• Second front	10 feet
• Second front, if any portion of the yard is within 50 feet of LDR, MDR, HDR	15 feet
• Sides	None
• Sides, if any portion of the yard is within 50 feet of LDR, MDR, HDR	
- 1st floor	15 feet
- 2nd floor	20 feet
- 3rd floor	30 feet
• Rear	None
• Rear, if any portion of the yard is within 50 feet of LDR, MDR, HDR	
- 1st floor	15 feet
- 2nd floor	20 feet
- 3rd floor	30 feet
Height, maximum	125 feet
Landscape requirements (minimum): <i>See Landscape, Recreation, Recycling/ Solid Waste Space requirements chapter for further requirements</i>	
• Fronts	5 feet
• Fronts, if any portion of the yard is within 50 feet of LDR, MDR, HDR	15 feet
• Sides	None
• Sides, if any portion of the yard is within 50 feet of LDR, MDR, HDR	15 feet
• Rear	None
• Rear, if any portion of the yard is within 50 feet of LDR, MDR, HDR	15 feet
Off Street Parking	
• Warehousing	1 per 2,000 sq. ft. usable floor area min.
• Offices	2.5 per 1,000 sq. ft. usable floor area min.
• Manufacturing	1 per 1,000 sq. ft. usable floor area min.
• Other Uses	See TMC Chapter 18.56, Off-street Parking & Loading Regulations

*(Ord. 1872 §12, 1999; Ord. 1758 §1(part), 1995)*