

COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON  
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DEPUTY

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

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NO. 41361-2-II

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KS TACOMA HOLDINGS, LLC,

Appellant,

v.

SHORELINES HEARINGS BOARD, et al.

Respondents.

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OPENING BRIEF OF KS TACOMA HOLDINGS, LLC

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## I. INTRODUCTION

The City of Tacoma erroneously approved a Shoreline Permit Revision for respondent Hollander's development on the Thea Foss Waterway in Tacoma, Washington and that approval will cause specific, concrete harm to appellant KS Tacoma Holdings' interests.

KS Tacoma Holdings owns the Hotel Murano Washington, which is just blocks away from the Hollander proposal site. The Hollander Investment proposal to develop a Hilton Garden Inn and Marriott Residence Inn on the waterway will harm KS Tacoma's view, aesthetic, and land use interests of the Thea Foss Waterway. These are concrete and specific interests that are within the zone of interests of the Shoreline Management Act and that will be harmed by the City's approval of Hollander's development proposal.

The Washington State Shorelines Hearings Board has barred KS Tacoma Holdings from challenging the City's approval of the Hollander development proposal on the grounds that KS Tacoma did not have standing. This is despite that KS Tacoma clearly demonstrated a personal and concrete stake in the outcome of the case. The Board construed the standing requirements incorrectly and erred when it concluded that KS Tacoma's factual allegations on view, aesthetics, and land use injuries did not demonstrate clear injury-in-fact. In contrast to the Board's conclusion

otherwise, it is well established that a corporation can assert view, land use, and aesthetic injuries for purposes of standing. The existence of an economic interest does not make a corporation somehow suspect, nor does it foreclose the potential for a corporation having interests that are separate and distinct from its economic interest.

In addition, contrary to the holding of the Board, KS Tacoma is legally entitled to assert the rights of its owners, employees, and guests to establish standing based on organizational standing and easily meets the test in that regard. Therefore, the impacts to its owners, employees, and guests are relevant to the question of whether KS Tacoma itself has standing.

The Board improperly limited KS Tacoma to asserting injuries caused by Hollander's purported "revisions" and did not consider injuries caused by the development as a whole. That was despite the fact that the heart of petitioner's case is that the proposal is not a revision at all. Success on the merits would allow KS Tacoma to address the impacts of the entire proposal and raise a broader range of legal issues associated with that review. As a result, the issue before the Board with respect to standing is the impact of the entire proposal, not just those caused by the "revisions."

The end result of the Board's ruling on standing is that a project that has been improperly treated as a revision will go forward despite that the

applicant is legally required to apply for an entirely new Shoreline Substantial Development Permit. The project will go forward despite that it is inconsistent with the City of Tacoma's Shoreline Master Program. Petitioner will never be able to fully present its issues regarding impacts and the scope of the revisions because the Shorelines Hearings Board preemptively decided those issues in the guise of addressing petitioner's standing.

## **II. ASSIGNMENTS OF ERROR AND ISSUES PRESENTED**

### **A. Assignments of Error**

Appellants assign error to the Shorelines Hearings Board's Order of Dismissal ( June 10, 2010); Order Denying Motion to Intervene (June 10, 2010); and Order Denying Reconsideration (July 26, 2010).

### **B. Issues Presented**

The central issue presented in this matter is whether KS Tacoma Holdings has standing to seek review of the City of Tacoma's approval of the Shoreline Permit Revision for the Foss Site 4 proposal. That question raises several sub-issues, which are:

1. Whether KS Tacoma or its owners, guests, and employees will suffer actual injury-in-fact that is concrete and particularized, whether the injury is within the zone of interest protected by the Shoreline

Management Act, and whether the injury is redressable by a favorable decision?

2. Whether a corporation can assert view, land use, and aesthetic injuries for purposes of standing?

3. Whether KS Tacoma can assert the rights of its owners, employees, and guests to establish standing based on organizational standing?

4. Whether the impacts of the entire Foss Site 4 proposal are relevant to the question of standing and not just the changes that are characterized by respondents as “revisions?”

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

#### **A. The Thea Foss Waterway Development Plan**

The Thea Foss Waterway in Tacoma, Washington has been designated as a shoreline of statewide significance under the Shoreline Management Act (SMA), Ch. 90.58 RCW. In 2005, the City of Tacoma adopted a Thea Foss Waterway Design and Development Plan as an element of its Master Program for Shoreline Development. AR 161. In that plan, the City developed a vision for the Waterway.

The Thea Foss Waterway is described in the Plan as representing a unique opportunity for the City of Tacoma to create an attractive focal place

for the enjoyment of the inland waters of Puget Sound within an urban context. AR 166. The Development Plan states:

The Waterway's historic past and working waterfront, combined with new cultural, recreational, residential, office and retail uses, will create a lively urban environment. A linear waterfront park will link together a variety of attractive, ground level public activities and uses accessible to all of Tacoma's citizens and to the region.

*Id.* The Development Plan is meant to guide the development and use of the Thea Foss Waterway as it becomes the gateway to downtown, where public and private redevelopment efforts will create a lively mixed use district for living, working, and playing. *Id.* The Plan places a strong emphasis on developing a mix of activities and features to help strengthen the viability of shoreline use and add to the ambience and character of the waterfront. AR 168-169. The Plan expressly states that the Waterway should have a variety of uses that encourage living, working, and playing in the same area. *Id.*

The City of Tacoma and the Foss Waterway Development Authority have made it clear in the past that development of the waterway must be world class. AR 588. Over \$250 million public dollars set the cornerstone for this vision and mandate. *Id.* The mandate spoke of the world renowned architecture, high scale developments, and a quality of life that would support a neighborhood – a residential community with an active marina, lots of

restaurants, and places to go for breakfast. *Id.* The plan was to create an aesthetically beautiful area with architectural wonders. *Id.*

Each developer of the four recent developments on the Thea Foss Waterway have developed world class or esplanade properties. *Id.* Arthur Erickson, a world renowned architect, designed the Museum of Glass on the waterway. *Id.* Sophisticated and well known architect Sentinel Varney G2 and Mithun designed the Esplanade and Thea's Landing respectively. *Id.* Grace Pleasants developed the Albers Mill Lofts with an aesthetic that transcends the ordinary and is characterized as a one-of-a-kind high end development. *Id.* The Museum of Glass, the Esplanade, and Albers Mill Lofts and Thea's Landing are all unique, aesthetically attractive, and architecturally significant buildings that stand out as one of a kind. *Id.* There is, as a result, a strong aesthetic character on the Thea Foss Waterway.

B. The Original Shoreline Substantial Development Permit for Foss Site 4

On February 9, 2007, the City of Tacoma approved a shoreline substantial development permit (SHR 2006-40000071970) for development proposed by Site 4 Foss Waterway, LLC. AR 128. The original proposal was for development of a new mixed-use building at 1543 Dock Street in Tacoma, Washington on a site along the Thea Foss Waterway referred to as "Foss Site 4." *Id.* The proposal was for a boutique hotel that was to consist

partly of hotel guest rooms and partly of permanent residential units with some retail/commercial uses at street level. *Id.* The development proposed significant public spaces, nice restaurants, and nice lounges. AR 589. The concept was for an upscale mixed-use development that proposed a design aesthetic and uses that were consistent with the City's vision for the Thea Foss Waterway and with the already existing architecture along the waterfront. *Id.*

C. The New Hollander Proposal for Development at Foss Site 4

Several years later, Hollander Investments entered into a contract to purchase the subject property. Hollander abandoned the previous owner's plans and designed new plans based on the concept of generic, limited-service formula hotels. AR 128-137; AR 589. The new proposal was for development of a 152-room Hilton Garden Inn and 104-unit Marriott Residence Inn with no residential component. *Id.* Hollander would construct two nearly 100-foot hotel towers consisting of a combined 256 guest rooms, retail space, and 60,000 square feet of parking. *Id.* The proposal for development was not a minor "revision" to the original proposal, rather it was an entirely new plan for development. The elimination of residential units was a significant change of use. The number of hotel rooms were increased by 62 percent and the revised proposal doubled the site coverage to 121,262

square feet. The design of the project changed from one building to two separate towers with different amenities and uses introduced to accommodate a generic formula hotel use.

The Hilton Garden Inn and Marriott Residence Inn would have walls of a fake brick façade and formulaic architecture with no respect for the aesthetic of the area. AR 589. The design is for a middle-of-the-road, low end hotel. *Id.* The buildings will be very unattractive. *Id.* The developers are building a cookie cutter Marriott Residence Inn and Hilton Garden Inn, which are hotels that are typically found along a highway corridor. *Id.* They will not have any special aesthetic qualities, nor will they be world class architectural wonders. *Id.*

D. The New Hollander Proposal's Impacts to Petitioner KS Tacoma Holdings, Its Owners, Guests, and Employees

The new Hollander proposal will have multiple adverse impacts to petitioner KS Tacoma Holdings, its owners, guests, and employees.<sup>1</sup> There will be impacts to the views of the Thea Foss Waterway area from the Hotel Murano guest rooms; impacts to the views of the waterfront for the owners, guests, and employees walking along the waterfront; impacts to the land use and character of the neighborhood where the Hotel Murano is located; and

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<sup>1</sup> As is explained in full in Section IV.E below, KS Tacoma is legally authorized to sue on behalf of its employees and guests based on organizational standing.

impacts to the aesthetics of the shoreline that is enjoyed by Hotel Murano guests and employees.

Petitioner KS Tacoma Holdings, LLC owns the Murano Hotel, which is located at 1320 Broadway Plaza in Tacoma, Washington. AR 156-157. The Murano Hotel is approximately five city blocks from Foss Site 4. *Id.* Many of the Hotel Murano guests select the Murano for the views of the Foss Waterway area from their guest rooms. AR 157. From there, they enjoy the unobstructed and unique view of the Foss Waterway. AR 174. The owners and guests also spend time walking through the neighborhood and waterfront, enjoying the views during their visits to the area. AR 157; AR 175. Hollander's proposed development will negatively impact the views from the Hotel Murano. *See* Section VI.F.2 for greater detail.

The Hotel Murano guests and employees also enjoy the aesthetics of the Thea Foss Waterway when they frequent the waterfront for walking, running, exercise, and sightseeing. AR 158; AR 175. They use the walkway along the shoreline adjacent to the Foss Site 4. AR 158. Mr. Jacobs, part owner and the manager of KS Tacoma Holdings, visits the Hotel Murano many times each month and has occasion to enjoy the aesthetics and views of the Thea Foss Waterway from the hotel. *Id.* He also runs along the shoreline

area past Foss Site 4 during the early morning hours on most of his overnight visits to the Hotel Murano. *Id.*

The new proposal for a generic, limited service branded hotel will introduce a completely different and less attractive aesthetic to the shoreline. AR 589. The previous proposal would have been a unique and upscale aesthetic that was in scale with the City's shoreline plans for the Thea Foss Waterway. *Id.* In contrast, the new proposal will change the character of development on the shoreline in a negative way aesthetically. *Id.* It will adversely impact the use and enjoyment of the shoreline by the Hotel Murano guests and employees. That will, in turn, adversely affect the reputation and character of the Hotel. *Id.*

The Hotel Murano has been an integral part of the Thea Foss Waterway community and neighborhood since the late 1980s and it has an interest in the community and in the welfare of its guests. AR 157. KS Tacoma Holdings built the Hotel Murano in 2008, recognizing that the character of that hotel is consistent with the goals of the City for this area. *Id.* AR 158. The City's plan for the area (the Thea Foss Waterway Development Plan) emphasizes a vision of a variety of land uses that encourage living, working, and playing in the same area. AR 166, AR 169-170. The Hotel Murano's location provides a unique opportunity for hotel guests to enjoy this

type of local community atmosphere. Hotel owners, employees, and guests take walks in the vicinity of the hotel and enjoy the mixed-use, residential, and high-end commercial community setting as well as the water-oriented uses along the Foss Waterway. *Id.* That is consistent with the City's vision for the shoreline and consistent with KS Tacoma Holdings' interests. *Id.* KS Tacoma has pride in the community and its role therein. *Id.*

The lack of a residential component in the revised project combined with the generic, formulaic, character of the hotels being proposed creates a negative impact to the community and undermines the vision of the City for the Thea Foss Waterway as expressed in the Thea Foss Waterway Design and Development Plan. This is explained at greater length and detail in Section IV.F.4.

E. The City of Tacoma's Approval of the Shoreline Permit Revision

On December 17, 2009, the City of Tacoma issued a letter approving the Hollander proposal as a Shoreline Permit Revision. AR 128-131.

A proposal can be characterized as a revision only when the proposed changes are within the "scope and intent" of the original permit. WAC 173-27-100(2). The Hollander proposal was not within the scope and intent of the original permit. It represented a substantial change that was not appropriate for the truncated process reserved for minor project "revisions." The City

concluded nonetheless that the revised proposal was “within the scope and intent of” the original permit pursuant to WAC 173-27-100(2) and, therefore, allowed the new proposal to be treated as a project revision rather than requiring that the developer apply for a new substantial development permit for its new proposal.

The City of Tacoma’s characterization of the application as a revision instead of a new permit allowed for very limited public involvement and also severely limited the ability of interested parties to challenge inconsistencies with the Shorelines Management Act. But for the characterization as a “revision,” the public and other agencies would have had an opportunity to engage in a comprehensive public process and raise a much broader range of legal issues.

F. Appeals of the Shoreline Permit Revision Approval

KS Tacoma Holdings filed a timely Petition for Review to challenge the Shoreline Permit Revision approval on January 8, 2010. AR 1-8. KS Tacoma requested that the Shorelines Board vacate, remand, and/or rescind the permit revision on the grounds that the permit revision was inconsistent with Shoreline Management Act and the City of Tacoma’s Shoreline Master Program. *Id.* In addition, KS Tacoma challenged the City of Tacoma’s characterization of the proposal as being a “revision” of the original proposal.

*Id.* Respondent City of Tacoma and Hollander moved to dismiss KS Tacoma Holdings' appeal on the grounds that (1) KS Tacoma Holdings was barred from raising challenges of inconsistency with the Shoreline Management Act and the Shoreline Master Program because the proposal was characterized as a revision and (2) KS Tacoma Holdings lacked standing. AR 101-111; AR 115-125.

The Shorelines Hearings Board granted respondents' motions to dismiss with its Order of Dismissal issued on June 10, 2010. AR 473. The Board denied a motion to intervene filed by Grace Pleasants on the grounds that the case was being dismissed due to KS Tacoma's lack of standing. Order Denying Motion to Intervene (June 10, 2010). AR 470-472. The Shorelines Hearings Board denied reconsideration of its decision on July 26, 2010. AR 535-542.

On December 20, 2010, a Court Commissioner for this Court granted a request for discretionary review by the Washington Court of Appeals pursuant to RCW 34.05.522 of the Shorelines Hearings Board decision.

#### **IV. ARGUMENT**

Petitioner KS Tacoma Holdings has standing to seek review of the City of Tacoma's approval of the shoreline permit revision as is demonstrated below.

A. Standard of Review Under the Administrative Procedures Act

When reviewing agency orders in an adjudicative proceeding under the Administrative Procedures Act, the Court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

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

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter, ...

(i) The order is arbitrary or capricious.

RCW 34.05.570. In this case, the Shorelines Hearings Board decision was based on an erroneous interpretation and application of standing law, was arbitrary and capricious and was not supported by substantial evidence as is demonstrated below.

B. The Overall Purpose and Structure of the Shoreline Management Act

To determine whether an appellant has standing to seek review of a decision by the Shorelines Hearings Board, it is useful to understand the overall purpose and structure of the Shoreline Management Act.

The Shoreline Management Act of 1971, ch. 90.58 RCW, was adopted to prevent the inherent harm in uncoordinated and piecemeal development of the State's shorelines. RCW 90.58.020. The Act requires that each City and County prepare and adopt a Shoreline Master Program (SMP), which is essentially a comprehensive land use plan for a described shoreline area, including: use regulations, a statement of desired goals, and specific standards developed in accordance with the Act's policies. RCW 90.58.030(3)(b). As mentioned above, the Thea Foss Waterway Development Plan is an element of Tacoma's Master Program for Shoreline Development. AR 393.

A "substantial development," which is defined by the Act in terms of a project's size and/or impact, that is proposed within 200 feet from the ordinary high water mark of a shoreline may not be undertaken without first obtaining a permit from the jurisdiction with authority. RCW 90.58.140. Such a development may not be approved unless it is consistent with the policies of the Shoreline Management Act as well as the applicable guidelines, rules, and Master Program. RCW 90.58.140.

Nothing in the Shoreline Management Act grants authority to a local jurisdiction to approve revisions to substantial development permits. The

only source for this authority is an agency rule set forth in WAC 173-27-100.

That rule states, in part:

... When an applicant seeks to revise a permit, local government shall request from the applicant detailed plans and text describing the proposed changes.

(1) If local government determines that the proposed changes are within the scope and intent of the original permit, and are consistent with the applicant Master Program and the Act, local government may approve a revision.

(2) “Within the scope and intent of the original permit” means all of the following:  
...

WAC 173-27-100. Persons or entities who wish to challenge a revision approval are limited by this rule to one single issue on appeal: whether the revised project is within the scope and intent of the original permit. WAC 173-27-100(8).<sup>2</sup> Under this rule, appellants are not allowed to challenge whether revisions are consistent with the Shoreline Management Act, the applicable guidelines, rules, or Master Program in an appeal of a revision.

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<sup>2</sup> In Petitioner’s Opposition to Motions to Dismiss filed with the Shorelines Hearings Board, KS Tacoma argued that the Shorelines Hearings Board is not bound by this provision in Ecology’s rule because Ecology does not have authority to limit the Board’s jurisdiction. AR 152-154. The Board’s jurisdiction is established by RCW 90.58.180 and nowhere does the Shoreline Management Act grant Ecology, local jurisdiction, or other entity the authority to restrict the Board’s jurisdiction as done by that provision.

C. The Legal Test for Standing Before the Shorelines Hearings Board

The Shoreline Management Act (“SMA”) allows any person “aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state” to seek review by the Shorelines Hearings Board. RCW 90.58.180; *West v. City of Olympia*, SHB 08-013, 2008 WL 5510448 (Order On Motions For Summary Judgment, Nov. 17, 2008); *Alexander v. Port Angeles*, SHB No. 02-027, & No. 02-028, 2003 WL 1227960 (Summary Judgment, Mar. 12, 2003) (“*Alexander*”).

To establish that it is a “person aggrieved,” petitioner is required to demonstrate that: (1) it will suffer an actual “injury in fact” that is concrete and particularized; (2) the injury is within the “zone of interest” protected by the SMA; and (3) the injury is redressable by a favorable decision. *Alexander* at 2, citing *Anderson v. Pierce County*, 86 Wn. App. 290, 299, 936 P.2d 432 (1997).

Standing before the Board is liberally construed. *Sahlin v. City of University Place*, SHB No. 03-024, 2004 WL 322136 (Order on Summary Judgment, Feb. 13, 2004). The liberal construction of standing requirements is consistent with the Washington Supreme Court observations that the SMA must be broadly construed in order to protect the state shorelines as fully as possible. *English Bay Enterprises, Ltd. v. Island County*, 89 Wn.2d 16, 20,

568 P.2d 783 (1977); *Hama Hama v. Shoreline Hearings Board*, 85 Wn. 2d 441, 446-47, 536 P.2d 157 (1975) (“It seems well-nigh irrefutable that these goals and purposes can be effectuated best by giving an expansive rather than restrictive reading to the appeals provisions of the SMA.”).

1. The legal standard for injury-in-fact

To show “injury in fact,” a petitioner must present evidence indicating that it will be adversely affected by the decision at issue. *Anderson v. Pierce County*, 86 Wn. App. at 299. “The question of standing is whether the litigant is entitled to have the Court decide the merits of the dispute or a particular issue.” *Worth v. Saldin*, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). On a motion to dismiss, the “general factual allegations of injury resulting from the defendant’s conduct may suffice” to demonstrate standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). An argument directed to the merits of an appeal are not appropriately introduced as an argument against standing. *Magnolia Neighborhood Planning Council v. City of Seattle*, 155 Wn. App. 305, 312, 230 P.3d 190 (2010).

The interests that must be shown for standing must be more than simply the abstract interest of the general public in having others comply with the law. *Biermann v. City of Spokane*, 90 Wn. App. 816, 820, 960 P.2d 434

(1998). To show an injury-in-fact, the appellant must allege specific and perceptible harm. *Suquamish Indian Tribe v. Kitsap County*, 92 Wn. App. 816, 829, 965 P.2d 636 (1998). The injury-in-fact test requires more than injury to a cognizable interest, it requires that the party seeking review be himself or herself among the injured. *Lujan v. Defenders of Wildlife*, 504 U.S. at 563. No standing is conferred to a party alleging a conjectural or hypothetical injury. *Jeannie Wagenman and Loon Lake Association v. Stevens County*, SHB No. 10-018 (2001 WL 379050) (2011) (Order Denying Motion for Partial Summary Judgment and Motion to Dismiss, and Granting Motion for a More Definite Statement).

That said, a party need not show a particular level of injury to establish standing. *Suquamish Indian Tribe v. Kitsap County*, 92 Wn. App. at 829. In *Suquamish Indian Tribe*, the Court rejected defendant's argument that the injury caused to plaintiff by increases in traffic on the roads was not significant enough to assert standing. *Id.*

The injury-in-fact requirement includes harm to recreational, aesthetic, and other benefits that individuals enjoy when they use the area that is adversely affected by the action being challenged. *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S.

669, 93 S.Ct. 2045, 37 L.Ed.2d 254 (1973);<sup>3</sup> *Friends of the Earth v. U.S. Navy*, 841 F.2d 927, 931 (9<sup>th</sup> Cir. 1988); *Friends of the East Lake Sammamish Trail v. City of Sammamish*, 361 F. Supp.2d 1260 (W.D. Wash. 2005).

2. The legal standard for zone of interest

The second condition of standing under the Shorelines Hearing Board test is commonly referred to as the “zone of interest test.” *Chelan County v. Nykreim*, 146 Wn.2d 904, 937, 52 P.3d 1 (2002). “Although the zone of interest test serves as an additional filter for limiting the group [that] can obtain judicial review of an agency decision, the ‘test is not meant to be especially demanding.’” *Id.*, citing *Seattle Building and Construction Trades Council v. Apprenticeship and Training Council*, 129 Wn.2d 787, 797, 920 P.2d 581 (1996). The test focuses on whether the authors of the provisions at issue intended the agency to protect the type of interests alleged when taking the action at issue.

Interests within the zone of interests under the SMA include land use interests, recreational interests, view interests, and aesthetic interests.

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<sup>3</sup> Washington State Courts rely on and adopt federal jurisprudence for purposes of determining standing issues. See *SAVE v. City of Bothell*, 89 Wn.2d 862, 866-67, 576 P.2d 401 (1978); *Magnolia Neighborhood Planning Council v. City of Seattle*, 155 Wn. App. at 312.

For example, in response to an argument that view and aesthetic impacts could not establish standing, the Shorelines Hearings Board stated:

The Shorelines Hearings Board has noted in many cases the provisions of RCW 90.58.900 which require the Act “to be liberally construed to give full effect to the objectives and purposes for which it was enacted.” The Shoreline Act’s broad ranging goals include preserving the public’s opportunity to enjoy the physical and aesthetic qualities of the natural shorelines of the state. RCW 90.58.020. The Board has construed standing to include visual and aesthetic interests. In the recent case *Alexander v. Port Angeles*, SHB Nos. 02-027 and 02-028 (2003) the Board found the petitioners met standing requirements by alleging impairment of views from areas and parks that they frequented. *Id.* at p. 4. Mr. Sahlin has established a similar interest in the visual and aesthetic impacts presented by the marina’s project. Ms. Ziesmer has an even more direct visual interest in the construction, since it may impact the view toward the water from her residence. On the record presented, both Mr. Sahlin and Ms. Ziesmer have established standing to challenge the shoreline permit and dismissal on that ground is not warranted.

*Sahlin v. City of University Place*, SHB No. 03-024 at 5.

Walking in the shoreline area at issue on a regular basis, enjoying the views of the shoreline, and using the shoreline area frequently are interests within the zone of interests of the SMA. *West v. City of Olympia*, 2008 WL

5510448 at 2. In *Alexander*, the Board found that walking in the impacted area and impacts to views is sufficient to show standing, stating:

[T]he alleged impairment of views from areas and parks that Mr. Tuttle frequents does show sufficient injury in fact within the zone of interests protected by the statute. The same is true for Mr. McClaskey's use and enjoyment of the areas around the proposed project, local parks, and Ediz Hook. The Board has authority to redress the injuries suffered by Mr. Tuttle and Mr. McClaskey. Therefore, both of these named individuals have standing to pursue these petitions.

*Id.*

Impacts to land use and neighborhood community are also within the zone of interests of the Act. As noted above, the overall purpose of the Shoreline Management Act is to prevent the inherent harm in uncoordinated and piecemeal development of the State's shoreline. RCW 90.58.020. The statute is focused on developing a comprehensive land use plan for described shoreline areas and setting forth land use regulations. RCW 90.58.030(3)(b). The SMA purposes include an element of preserving neighborhood and community development on the shorelines. RCW 90.58.070; 080. The SMA speaks to land use by requiring that local governments develop regulations ("master programs") to plan for reasonable uses of the shorelines. *Id.* The SMA requires that all shoreline development conform with both the SMA

and the local government's master program. RCW 90.58.080(2); *Buechel v. Dep't of Ecology*, 125 Wn.2d 196, 203-04, 884 P.2d 910 (1994). The land use aspect is carried out in the Thea Foss Waterway Development Plan, which is an element of the City of Tacoma's Master Program for Shoreline Development. The Development Plan guides development and use of the Thea Foss Waterway defining the community and neighborhood. It is these provisions that KS Tacoma relies upon to challenge the City's approval of Hollander's development.

The Shorelines Hearings Board has ruled that economic interests are not within the zone of interests of the Shoreline Management Act, but in *Biggers v. City of Bainbridge Island*, the Washington State Court of Appeals ruled that the economic interests of a corporation engaged in land development and shoreline construction in the City were within the zone of interests of the local Shoreline Master Program (and, therefore, the Shoreline Management Act). *Biggers v. City of Bainbridge Island*, 124 Wn. App. 858, 864, 103 P.3d 244 (2004). While that case was brought as a declaratory judgment action, the Court made it clear that, to show standing, the plaintiffs' interests had to be within the "zone of interests" of the shoreline provisions. The Court stated that the private company, SeaLevel Bulkhead Builders, Inc., had interests that fell within the ambit of the Shoreline Master Program for

the City. The Shoreline Master Program protected shoreline development and a moratorium preventing development within that shoreline personally impacted Sea Level's economic interests. *Id.*

Even the Shorelines Board has made clear that economic competitors are by no means foreclosed from being able to show standing even if economic interests are not within the zone of interests of that Act. *Alexander* at 3. Claims raised by persons or entities who happen to be economic competitors are not considered somehow suspect by the Board. *Id.* Indeed, in *Alexander*, the Board found that petitioners who had economic interests in the project at issue did have standing based on other interests that were separate and distinct from their economic interests.

### 3. The legal standard for redressability

The third prong of the legal test for standing before the Shorelines Hearings Board simply requires that the injury asserted be redressable by a favorable decision. *Alexander v. Port Angeles*, 2003 WL 1227960 at 2. This requires that the appellant show that a decision in its favor would resolve the harm alleged by the appellant.

#### D. A Corporation Can Assert View, Land Use, and Aesthetic Injuries

Legal precedent shows overwhelmingly that a corporation can have an interest in personal types of injuries for purposes of standing as contrasted

with an economic interest. Time and again, courts have held that corporations can have an interest in issues that are personal and, therefore, have standing to bring environmental claims. *See, e.g., Overseas Shipholding Group v. Skinner*, 767 F. Supp. 287 (D.D.C. 1991) (shipholding corporation had standing to sue on its own right under NEPA based on corporation's interests in clean air and clean water); *Hovsons, Inc. v. Secretary of Interior*, 519 F. Supp. 434 (1981), *aff'd* 711 F.2d 1208 (1983) (corporation had an interest in the preservation of environmentally sound development of certain land and, therefore, had standing under NEPA); *Mobile Oil Corp. v. F.T.C.*, 430 F. Supp. 855 (1977), *rvs'd on other grounds*, 562 F.2d 170 (1977) (oil companies had standing under NEPA because they had a stake in our nation's environment); *Pack v. Corps of Engineers of the United States Army*, 428 F. Supp. 460 (M.D. Fla. 1977) (the fact that commercial shrimpers possessed an economic interest in the outcome was not sufficient to exclude the association from having standing under NEPA because the commercial shrimpers also had asserted a conservational and environmental interest in the preservation of shrimp and other marine life); *Chemical Leaman Tank Lines, Inc. v. United States*, 368 F. Supp. 925 (D. Del. 1973) (railroad and motor carrier companies had an interest in protecting against air pollution, highway

congestion, and the depletion of the national fuel supply and, therefore, had standing under NEPA).

In *Mobile Oil Corp. v. FTC*, the Court established that because plaintiff oil companies' claims had been brought under the National Environmental Policy Act, plaintiffs would have standing to bring the action only if they could prove environmental injury in fact. *Mobile Oil Corp. v. FTC*, 430 F. Supp. At 861. The oil company plaintiffs alleged that the action challenged would result in unnecessary depletion of our nation's natural resources and because oil companies are dependent upon these resources, plaintiffs would suffer injury-in-fact. *Id.* at 852. The oil companies alleged that by virtue of their status as oil companies, they have a stake in our nation's environment. *Id.* The Court agreed.

In *Overseas Shipholding Group v. Skinner*, Overseas Shipholding Group (OSG), a corporation, challenged a rule adopted by the Maritime Administration based on violations of the National Environmental Policy Act. The Court recognized that OSG had an economic interest, but found that OSG had appropriately alleged and proven a risk of environmental injury. OSG had alleged that the air and water environment in which plaintiff's vessels, crews, and other personnel operate would be made substantially more hazardous. *Id.* at 291. The Court held that the risk of air

and water pollution in the areas in which the company and its employees did business conferred standing on the organization.

This list is just a mere sample of the many, many cases in which federal courts have held that corporations can assert a myriad of environmental interests. These cases are abundantly clear that corporations can experience injuries that are personal. While for-profit corporations may possess an economic interest, they also had the ability and right to assert interests that individual people may assert, such as injuries from views, injuries from aesthetic impacts, and injuries from damaging development that undermines the community and land use planning and other environmental injuries that are separate and distinct from their economic interests.

At first, the Shorelines Hearings Board issued a ruling that appeared to conclude that, by definition, no corporation has the right or ability to assert an interest in protecting views, aesthetics, or land use impacts. AR 482-484. On reconsideration, however, the Board acknowledged that a corporation could assert a concrete injury that is within the zone of interest protected by the Shoreline Management Act. But the Board's basis for its ruling against KS Tacoma was vague. The language could be read to state that a corporation could only assert harm to the shoreline habitat and ecology, harm to marine species, or impacts from the discharge of pollutants but not to

views, aesthetic impacts, or land use, which is nonsensical. *See* AR 538. Whatever the basis, the Board erred because view, aesthetics, and land use are clearly interests within the SMA zone of interests, they are all injuries that a corporation can assert, and those injuries are directly related to the corporate purpose of KS Tacoma.

E. KS Tacoma Is Legally Authorized to Assert the Rights of its Owners, Employees, and Guests Based on Organizational Standing

KS Tacoma does have standing on its own right, but it is also legally authorized to sue on behalf of its employees and guests based on organizational standing. An organization may sue on behalf of its members if (1) the interest to be protected by the suit are germane to the organization's purpose and (2) neither the claim asserted nor the relief requested requires the participation of individual members; and (3) the organization's members would otherwise have standing. *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 97 S. Ct. 2434, 53 L.Ed.2d 383 (1977). The question of whether one's interest is germane is "undemanding" and requires only "mere pertinence between the litigation subject and organizational purpose." *Overseas Shipholding Group v. Skinner*, 767 F. Supp. 287 (D.D.C. 1991). This is a low bar, precluding only those whose litigation goals and organization's purpose are totally unrelated. *Id.*

Organizational standing is applied to corporations who are suing on behalf of their employees. See *Overseas Shipholding Group v. Skinner*, 767 F. Supp. at 292; *Oceanport Industries, Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892 (1994). In *Overseas Shipholding Group*, the court concluded that the plaintiff Overseas Shipholding Group, Inc. (OSG), which was a for-profit corporation, had standing to sue under NEPA on behalf of its employees. The court noted that its employees had standing to challenge a rule that would make their working environment more polluted and courts had accepted the corporate entity's ability to sue on this basis. *Id.* at 292, citing *Duke City Lumber Co. v. Butz*, 382 F. Supp. 362, 374 (D.D.C. 1974), *aff'd* 539 F.2d 220 (D.C. Cir. 1976); *County of Josephine v. Watt*, 539 F. Supp. 696 (N.D. Cal. 1982); *Cartwright Van Lines, Inc. v. United States*, 400 F. Supp. 795 (W.D. Mo. 1975), *aff'd* 423 U.S. 1083, 96 S. Ct. 873, 47 L.Ed.2d 94 (1976).

The *Overseas Shipholding* court ruled that the claim asserted and the relief requested did not require the presence of any individual employees because OSG did not seek monetary damages and desired only to force the agency to conduct the analysis required by NEPA in order to prevent the enumerated environmental risks. *Id.* The interests that OSG sought to protect were also "germane" to the organization's purpose. *Id.* Recognizing

that the requirement was undemanding, the court indicated that OSG sought to maintain a safe and healthy working environment in which to sail its ships and crews. It stated that while environmental concerns were not the guiding purpose of this corporate organization, the goal of preserving a safe work environment in the waterways was certainly pertinent, if not necessary, to OSG's successful operation. *Id.*

As OSG met the test for organizational standing, KS Tacoma also easily meets the test. KS Tacoma has standing to challenge a project that will adversely impact the views from its hotel enjoyed by its employees, owners, and guests as well as those individuals' use and enjoyment of the shoreline, aesthetic interests in the shoreline, and interest in the land use in the community. Like OSG, the claim asserted and the relief requested do not require the presence of any individual employees, guests, or owners because KS Tacoma does not seek monetary damages and desires only to have a full and proper review of this project. Finally, like OSG, the interests that KS Tacoma seeks to protect are germane to KS Tacoma's purpose. KS Tacoma seeks to ensure that the hotels built on Foss Site 4 are consistent with the vision that was expressed in the City of Tacoma's Thea Foss Waterway Design and Development Plan, and thereby in the City of Tacoma's Shoreline Master Program, which includes preserving and protecting views, aesthetics,

land use (community) and open space. The goal of preserving the existing environment on the shoreline is certainly pertinent, if not necessary, to protecting KS Tacoma's employees' and guests' interests.

F. KS Tacoma (and Its Employees, Guests, and Owners) Has Standing Under the SMA to Challenge the City of Tacoma's Approval of the Shoreline Permit Revision for the Foss Site 4 Proposal

Petitioner KS Tacoma Holdings is aggrieved by the City's approval of the Shoreline Permit Revision at issue in this appeal. The project authorized by the Permit Revision will adversely impact the Hotel Murano and its owners', employees', and guests' use and enjoyment of the shoreline area, including their enjoyment of the views, aesthetics, and land uses of the Thea Foss Waterway. AR 157-159; AR 174-175. They have concrete and personal interests within the zone of interests of the SMA that will be harmed by the City's approval of Hollander's development proposal.

1. The impacts of the entire project are relevant to the question of standing, not just the changes that are characterized as "revisions"

At the outset, it is important to recognize that the impacts of the entire project are relevant to the question of KS Tacoma Holdings' standing, not just the changes that were characterized as "revisions" to the original project. The Shorelines Hearing Board erred when it looked only at the changes proposed by Hollander from the original proposal to determine standing.

In its motion to dismiss, the City of Tacoma provided a list of comparative differences between the original permit and the revisions to the original proposed by Hollander and argued that the petitioner has not been prejudiced or injured by those changes. AR 117; AR 119-125. The City contended, incorrectly, that “petitioner fails to recognize, however, that the only aspect of height it can validly challenge is the difference between being granted by the revision – a difference in one inch in total height.” AR 120. This is simply incorrect.

This position ignores the legal issues that were presented in KS Tacoma’s appeal and the ultimate relief that KS Tacoma was seeking. KS Tacoma Holdings challenged the City’s approval of the Hollander proposal as inappropriate because the proposal was not a mere “revision” of the original proposal. It was improper for the City of Tacoma to approve Hollander’s new proposal as if it were a “revision” to the original permit instead of requiring that Hollander apply for a new substantial development permit.

In its petition for review, KS Tacoma Holdings presented this issue amongst nine other legal issues, the latter of which mostly challenged the project’s inconsistency with the Shoreline Management Act and the Shoreline Master Program. Hollander moved to dismiss a majority of these latter claims on grounds that the proposal was characterized as a “revision,” and

WAC 173-27-100(8) severely limits issues that can be raised in appeals of revisions. According to Hollander, the claims that challenged the proposal's consistency with the Shoreline Management Act and the City's Shoreline Master Program were barred by WAC 173-27-100(8) because it was characterized as a revision.

If petitioner is successful with its appeal on the merits before the Board, the relief would be an order voiding the Shoreline Permit Revision on the grounds that it is not a "revision" and allowing a legal challenge of the entire project as a new proposal. That, in turn, would allow petitioner to engage in a comprehensive public process to address the impacts of the entire project and raise the broad range of legal issues associated with that review.

KS Tacoma Holdings is injured by the City of Tacoma's decision to treat Hollander's new proposal as a "revision" to the old proposal because it has been completely shut out of the opportunity to engage in a proper public process for review of the entire project. The ultimate relief from this matter would not only allow KS Tacoma Holdings to engage in a comprehensive public process on the entire project, but would allow KS Tacoma Holdings to raise *all* of the legal issues concerning whether the entire project is consistent with the Shoreline Master Program and the Shoreline Management Act.

Ironically, KS Tacoma was limited by the Board to solely those injuries caused by the “revision,” despite that KS Tacoma’s central challenge was that the Hollander proposal is not a “revision.”

This changes the analysis for standing mostly for view impacts.<sup>4</sup> When considering impacts to view, impacts to shoreline use and community, and impacts to aesthetics that support standing all relate to the transition from an undeveloped site to the current proposal. For example, when considering impacts to view, the Board looked only at the view impacts caused by the “revision.” The Board stated:

The revision raises the height of one tower by only one inch. The massing of the revised two tower project is actually less intrusive on views than the original design because of the open area between the towers.

AR 483. Because KS Tacoma is challenging whether this is indeed a “revision,” the issue before the Board with respect to standing is that injury caused by the view impacts of the entire proposal, not just the “one inch” change. If the Board considered the view impacts of the entire proposal, it would obviously result in a different conclusion on standing from the evidence. The view impacts from the Hotel Murano demonstrates that there

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<sup>4</sup> The analysis for standing remains the same even if KS Tacoma is limited to asserting injuries from the revision with respect to land use and aesthetic injuries. The change from the previous project to the new Hollander proposal is significant with respect to land use and aesthetics as is explained in Sections 3 and 4 below.

will be specific and concrete view impacts to the Hotel Murano from the entire project. (*See* below.) The question for standing is not limited to the one inch, but rather the full project view impact.

The Board assumed it would resolve the merits in favor of the City (*i.e.*, declare the proposal to be a revision) and then used that assumption to conclude that KS Tacoma would suffer no injury. This was a legally flawed approach. Standing is not the time to address the merits. *Magnolia Neighborhood Planning Council v. City of Seattle*, 155 Wn. App. 305, 312, 230 P.3d 190 (2010). The Board should accept the good faith allegations of the petitioner and address standing from that perspective. The Board did the opposite – accepting the respondents’ views of the merits.

2. The views from the Hotel Murano will be adversely impacted by the Hollander development

KS Tacoma has a concrete and personal interest in views of the waterfront that will be harmed by the City’s approval of the Hollander proposal. The Hotel Murano is approximately five city blocks from Foss Site 4. AR 156-157. Many of the Hotel Murano guests select the Murano for the views of the Foss Waterway area from their guest rooms. *Id.* From there, they enjoy the unobstructed and unique view of the Foss Waterway. AR 174. Mr. Howard Jacobs, part owner of KS Tacoma Holdings, visits the Hotel Murano multiple times per month and enjoys the views of the Thea Foss

Waterway from the hotel. AR 158. In addition, the owners of KS Tacoma, employees of KS Tacoma, and Hotel Murano guests frequent the waterfront for walking, running, exercise, and sight-seeing. AR 158. They enjoy the view of the waterfront as they use it for recreational purposes.

The Hollander development will impact views from the hotel and at the waterfront. Hollander hired a consultant to prepare an analysis of the view impacts to the Hotel Murano. AR 586. That analysis demonstrates that there will be specific and concrete view impacts to the Hotel Murano. In the Hotel Murano view blockage analysis, simulated diagrams show that the views are impacted from Hotel Murano's 25<sup>th</sup> floor. *Id.* The Hilton Garden Inn and Marriott Residence Inn will be in direct viewing from the hotel. *Id.* The pictures make it perfectly clear that proposal will impact the current view of the Foss Waterway from the hotel. The view to the water is obstructed by the development. With this evidence, KS Tacoma Holdings proved that it indeed has standing to bring the appeal. KS Tacoma asserted specific, concrete, and immediate injury associated with views for the proposal.

3. The proposal will adversely impact the Hotel Murano's owners, guests, and employees' aesthetic enjoyment of the Thea Foss Waterway

KS Tacoma has a concrete and personal interest in the aesthetics of the Thea Foss Waterway that will be harmed by the City's approval of the

Hollander development proposal. The impacts caused by the proposal authorized by the Permit Revision will interfere with the aesthetic enjoyment of the Thea Foss Waterway by Hotel Murano owners, employees, and hotel guests visiting the Waterway area.

KS Tacoma, its owners, guests, and employees enjoy the existing architectural aesthetic of the Thea Foss Waterway. The Hotel Murano guests and employees frequent the waterfront for walking, running, exercise, and sightseeing. AR 158; AR 175. They use the walkway along the shoreline adjacent to the Foss Site 4. AR 158. Mr. Jacobs, runs along the shoreline area past Foss Site 4 during the early morning hours and most of his overnight visits to the Hotel Murano. AR 158.

A generic hotel on the waterfront will have a detrimental effect on the aesthetic of the shoreline. AR 158. The community goal for the Thea Foss Waterway is that development be “World Class.” *See* AR 588. The community mandate for design of the Thea Foss Waterway speaks of world renowned architecture, high-scale developments to create an aesthetically beautiful area with architectural wonders. AR 589. The Albers Mill Lofts, the Museum of Glass, the Esplanade, and Thea’s Landing are all unique, aesthetically attractive, and architecturally significant buildings that stand out

as one of a kind. *Id.* There is, as a result, an existing strong aesthetic character on the shoreline. *Id.*

The plans for the original proposal that were approved by the City of Tacoma three years ago were for a boutique hotel and residences that were consistent with the existing aesthetic of the Thea Foss Waterway. *Id.* The aesthetic of the original development was in line with the tradition that has already been established on and is planned for the Thea Foss Waterway. *Id.*

The plan for the Hollander proposal is completely different. It is for a Hilton Garden Inn and Marriott Residence Inn. They will not have any special aesthetic qualities, nor will they, by any means, be world class architectural wonders. *Id.* They propose walls of a fake brick façade and other formulaic architecture with no respect for the aesthetic of the area. *Id.* The design is for a middle of the road, low end hotel. *Id.* The buildings will be unattractive. *Id.* There will be a specific and concrete adverse aesthetic impact to KS Tacoma and its employees, guests, and owners who use the area regularly.

The revised project is inconsistent with a variety of design guidelines in the Master Program including, but not limited to, guidelines that relate to landscaping, open space, the location of uses within the building in relation to surrounding uses and activities, and the location of non-water oriented uses

within the project. It eliminates the uniqueness and one of a kind draw of Tacoma that Hotel Murano owners and guests have enjoyed historically and strays from what was proposed for this area. The new project does not have open space, with a park-like character, as is called for in the City's Master Program. All of these inconsistencies adversely impact KS Tacoma Holdings as owners of the Hotel Murano.

The proposal violates aesthetic guidelines in the City of Tacoma Shoreline Management Plan. The Plan states explicitly that "the purpose of the urban design component is to enhance the waterway's *visual identity* and functional relationships. AR 173. To this end, the Urban Design guidelines require design solutions that balance and achieve *the community goals for aesthetics* and that visually unify the waterway by instituting design standards for construction at the shoreline edge and the street corridors.<sup>5</sup> *Id.* The Plan states that "design standards should be established to ensure consistent character where appropriate along the shoreline in the streets encircling the waterway." *Id.*

Aesthetics are again referred to in the section of the plan that addresses public and private building development sites. For example, the

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<sup>5</sup> The entire Thea Foss Design and Development Plan is the existing law of the City of Tacoma and is an element of the City of Tacoma Shoreline Master Program. The design objectives that are listed in the Plan are on pages 22 through 23 of the Plan. The guidelines for public and private building development sites are on pages 47 through 50 of

guidelines require that each building establish an individual design, but utilize the characteristics of the waterfront environment and surrounding districts to ensure compatibility. The plan includes a vision for the waterway that is “a linear waterfront park [that] will link together a variety of *attractive, ground level public activities . . .*” AR 166 (emphasis supplied).

4. The proposed land use of the shoreline will adversely impact the Hotel Murano and its owners, guests, and employees

KS Tacoma has a concrete and personal interest in the local community and the types of land uses that exist in its neighborhood. Hollander’s proposed land use of the shoreline consists of generic limited-service formula hotels with no residential component. That land use change will adversely impact KS Tacoma Holdings.

The Hotel Murano has been an integral part of the Thea Foss Waterway community and neighborhood since the late 1980s. AR 157. KS Tacoma Holdings built the Hotel Murano in 2008, in a manner consistent with the goals of the City for this area. *Id.* The location of the Hotel Murano provides a unique opportunity for hotel guests to enjoy this type of local community atmosphere. *Id.* Hotel owners, employees, and guests take walks in the vicinity of the hotel and enjoy the mixed use, residential, and high end

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the Plan.

commercial setting as well as the water-oriented uses along the Foss waterway. AR 158-159. KS Tacoma Holdings has an interest in the local community and in the welfare of its guests. AR 158. It also has pride in the community and its role therein. *Id.*

The lack of a residential component in the revised project combined with the generic, formulaic, character of the hotels being proposed undermines the land use vision for the Thea Foss Waterway as expressed in the Thea Foss Waterway Design and Development Plan. *Id.* Building a generic limited-service, branded hotel ultimately sets the tone in limiting the viability and quality of future residential and high end commercial development in the area. AR 159; AR 175. The original project (before Hollander) was a unique, upscale, boutique hotel, with residential and retail components, which would complement the growth and creation of an upscale office, retail, and residential district. *Id.* In contrast, the decision to create a limited service, branded hotel will lessen appeal for future development and investment, will impact the land uses in the immediate vicinity, and will frustrate the City's efforts to develop this area with a mix of high-end residential and commercial uses. *Id.*

The Hollander proposal for a Hilton Garden Inn and Marriott Residence Inn – both transitory, generic branded hotels -- does not comply

with the vision for development of the Thea Foss Waterway as it is expressed in the Thea Foss Waterway Design and Development Plan, which is an element of the City of Tacoma's Master Program for Shoreline Development. The Thea Foss Waterway design and development plan expresses a theme: a working waterfront, combined with cultural, recreational, residential, office and retail uses, that will create a lively urban environment. AR 166. The goal is to create a lively mixed-use district for living, working, and playing. *Id.* It is not only the elimination of the residential component that will impact the community, but it is also the character of the development itself. The introduction of Hollander's proposed type of use: a hotel that has a very transitory clientele that undermines the goal of living, working, and playing in the area is a violation of the Thea Foss Waterway Plan and vision. The introduction of any development that is inconsistent with this goal undermines the interest of KS Tacoma in a community that meets these goals. That inconsistency with the vision for land use in the area will injure KS Tacoma because KS Tacoma has an interest in having *all* development in the area promote the working waterfront, promote residential, office and retail uses, and promote a lively urban environment.

## V. CONCLUSION

For the reasons set forth above, petitioner KS Tacoma Holdings, LLC respectfully requests that the Court reverse the decisions of the Shorelines Hearings Board, declare that KS Tacoma has standing to pursue the appeal before the Board, and remand to the Board with an order that the Board proceed on the merits of the appeal.

Dated this 7<sup>th</sup> day of March, 2011.

Respectfully submitted,

BRICKLIN & NEWMAN, LLP

By:



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NO. 41361-2-II

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KS TACOMA HOLDINGS, LLC,

Appellant,

v.

SHORELINES HEARINGS BOARD, et al.

Respondents.

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DECLARATION OF SERVICE

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DATED this 7 day of Month 2011, at Seattle, Washington.

  
ANNE BRICKLIN