

**DEVELOPMENT REGULATORY AGREEMENT BY AND BETWEEN
THE METROPOLITAN PARK DISTRICT FOR TACOMA AND THE CITY OF TACOMA**

This DEVELOPMENT REGULATORY AGREEMENT (this “**Agreement**”) is entered into this ____ day of _____, 2015, by and between the **Metropolitan Park District of Tacoma**, a municipal corporation (“Metro Parks”) and the **City of Tacoma**, a municipal corporation and first class city of the state of Washington (“City”) (collectively the “Parties”). The Parties hereby recite and agree to the following terms and conditions listed below:

RECITALS

1. The Parties enter into this Agreement in order to provide an “umbrella” regulatory backdrop against which Metro Parks’ Destination Point Defiance Master Plan will be overseen by the City in its regulatory role and implemented by Metro Parks over a potentially extended time period.
2. The Parties understand and acknowledge that this Agreement addresses development considerations and processes only at the most basic level and does not excuse either party from compliance with applicable laws in developing the subject property.

A. AUTHORITY: This Agreement is entered into pursuant to the authority found in RCW 36.70B 170-210, City of Tacoma Comprehensive Plan Open Space Policy OS-SP-2, and Tacoma Municipal Code TMC 13.05.095, as well as RCW 39.34.

B. SCOPE: This Agreement authorizes all land-uses and activities set forth and described in Metro Parks’ Destination Point Defiance Master Plan (Attachment A to this Agreement; hereinafter the “Master Plan”) along the general lines and schedule set forth in Attachment B in the general locations identified. These land-uses and activities are vested for the 20 year life of this Agreement. However, land-uses and activities that require shoreline permits, critical area review and permitting, historic review under TMC Chapter 13.07 or as amended, storm water approvals will only vest upon the filing of a complete building permit that attaches to that particular project under the Master Plan; accessibility under the Americans with Disabilities Act will be addressed under building code review for each project. The vesting established by this Agreement is limited to zoning and land-uses identified in the Master Plan. After the effective date of this Agreement, the uses set forth in the Master Plan shall be deemed approved, subject to implementing permits and processes for the effective period of this Agreement, and any permit or approval issued by the City after the execution of this Agreement must be consistent with this Agreement.

C. GENERAL CONDITIONS: The following conditions are requirements on all projects applying under TMC 13.05.095 (DRAs):

1. Best available science and best management practices shall be used to address critical areas in locations within, and projects set forth in the Master Plan.

Mitigation for impacts to critical areas and/or buffer shall be per TMC 13.11.270, General Mitigation Requirements, or as amended.

2. All project development will provide some level of environmental sustainability. This is attributable to the design and management of the environment, including stormwater systems and Low Impact Development (LID), in addition to other sustainable decisions that may include building certification through programs such as Leadership in Energy and Environmental Design (LEED).
3. No variances or discretionary permits may be applied for. Changes to standards may only be secured by amendment to this Agreement.

D. PROJECT SPECIFIC STANDARDS AND MITIGATIONS: The following conditions have been developed after Planning and Development Services' Director review of the Master Plan's SEPA Checklist and SEPA Checklist supporting documents, public comments submitted under TMC 13.02.05 and 13.02.045.H, and public comments at the October 13, 2015 public hearing:

1. All forest stewardship and landscaping standards within the Master Plan will be established by Metro Parks in strict accordance with the "*Point Defiance Stewardship Plan, June 30, 2010*" (SEPA Checklist Appendix E). Particular attention shall be paid to the forest management objectives set forth in pages 2 and 3 of this *Plan* and to the 'Stand Management Objectives and Policies' set forth on pages 18-21. More specifically, the two areas in the western part of the Forest Zone designated as Washington Natural Heritage Sites shall receive the highest level of protection (pages 21 and 22) and the bald eagle habitat recommendations (page 22) shall be adhered to. As to 'fire prevention and suppression' (pages 22 and 23) a further consideration will apply – see D1A.
 - 1a. While fire protection measures will be addressed in the developed areas of the Park at the building permit stage, in the undeveloped areas of the Park the Parties commit to the following consultative process: (1) meet within three months of execution of this Agreement to identify and agree upon a scope of work for a fire risk assessment, (2) Metro Parks will commission a report that addresses capital improvements and operational practices to address the risks identified, and (3) the Parties agree to jointly seek funding for the most cost effective measures identified
2. All off-street parking standards within the Master Plan will be established by Metro Parks; PROVIDED that every three years Metro Parks will monitor on-street parking in the neighborhoods adjacent to the Master Plan area, submit a written report to the PDS Director, and take corrective action to address any off-site parking problems identified.
3. Consistent with the investigation of the Traffic Impact Analysis Study, the intersection of North Pearl Street and North Park Avenue (entrance/exit from the Park) shall be improved to adequately accommodate the operation, circulation, and safety of all traffic modes using the intersection.

E. Operations and Safety – Conditions:

1. Corresponding with land use changes within or adjacent to the Park, the intersection of N Pearl Street and N Park Ave (i.e., entrance/exit from the Park) shall be improved to adequately accommodate the operation, circulation, and safety of all traffic modes using the intersection. The Transportation Analysis has indicated that a new roundabout will be constructed at the entrance, and the study's analysis shows that it can adequately accommodate future traffic demands. Therefore, its construction (assuming adequate design and inclusion of necessary control features) shall be a prerequisite for any Phase 1 (as described in the Transportation Analysis) development or improvements within the Park.
2. Corresponding with land use changes within or adjacent to the Park, the intersection of N Pearl Street and N 51st Street shall be improved to adequately accommodate the operation, circulation, and safety of all traffic modes using the intersection. The Transportation Analysis has indicated that mitigation measures at this intersection can yield acceptable traffic operations corresponding with Phases 1, 2, and 3 (as described in the Transportation Analysis) development and improvements. The mitigation prescribed in the Transportation Analysis will 1) require concurrence from the Town of Ruston since the proposed change impacts parking along the north side of North 51st Street east of Pearl Street, 2) may require reconstruction of the roadway/curbs to accommodate the proposed lane configurations, which would require City of Tacoma and Washington State Department of Transportation concurrence, and 3) may require corresponding changes to traffic signal equipment and/or infrastructure. Therefore, all intersection/traffic signal-related improvements shall be a prerequisite for any Phase 1 development or improvements within the Park.
3. Corresponding with land use changes within or adjacent to the Park, the intersection of N Mildred Street and N Park Avenue (alignment) shall be improved to adequately accommodate the operation, circulation, and safety of all traffic modes using the intersection. The Transportation Analysis did not specifically address the intersection control needs at this intersection as it relates to other envisioned roadway/walkway improvements within the Park which are mentioned in the Transportation Analysis. Therefore, in association with any Phase 1 development or improvement within the Park, an intersection design plan will be required to be developed and approved by the City of Tacoma which provides acceptable intersection control features and identifies required improvements for implementation.
4. Corresponding with land use changes within or adjacent to the Park, the segment of N Mildred Street between N Park Avenue (alignment) and N 51st Street shall be mitigated to control excessive vehicle speeds related to traffic arriving at and/or departing from the Park. The Transportation Analysis presented two engineering options along with additional enforcement by police. There are likely other options as well. All options must be comprehensively evaluated by the City of Tacoma for approval and implementation by Metro Parks in conjunction with any Phase 1 development or improvements within the Park.
5. Based on the Transportation Analysis, other public right-of-way intersections and/or roadways are not anticipated to be impacted to a degree that mitigation would be required, but the potential additional mitigation and improvements is expressly reserved by the City of Tacoma pending forthcoming development-specific application reviews.

6. As acknowledged in the Transportation Analysis, with the exception of a small portion of State Highway, “all roads, trails, and parking within Pt. Defiance Park are under the jurisdiction of Metro Parks, including their operation and maintenance.”

F. Mobility - Conditions:

1. Intersection and/or roadway improvements shall be required to ensure pedestrian mobility, in accordance with Public Right Of Way Accessible Guide-lines (PROWAG) and Americans with Disabilities Act (ADA), at and within the intersection areas being mitigated.
2. Mitigation and improvements at intersections and along roadways shall consider modifications that retain the capability to accommodate bicyclists.

G. Summary:

As mentioned above, the resulting mitigation and improvements resulting from the above conditions are based on the Development Regulation Agreement Transportation Analysis document prepared by the consultant team for Pt. Defiance Park. Its analysis assesses the trip generation and traffic impacts associated with the planned projects as part of the Park’s Master Plan and has inherent assumptions and presentation of information. Should any of these assumptions be found to be in error, to the degree that conclusions and resulting conditions are affected, then the City of Tacoma reserves the right to re-evaluate any conclusions, recommendations, and conditions stipulated.

Within the Transportation Analysis, the various Park projects were grouped into phases (“Phase 1,” “Phase 2,” and “Phase 3”) such that specific mitigation and improvement will only be able to be attributable to those groupings/phases. Therefore, mitigation and improvements deemed necessary to accommodate a given “phase” shall be required as part of the approval process for whichever individual project/improvement/change from the corresponding phase is first scheduled for implementation. The City may consider delayed or deferred implementation of mitigation if additional transportation analysis is provided at a more refined level commensurate with the particular project that shows the specific impacts are not representative of the phase assessed in the Transportation Analysis.

1. For any project conducted pursuant to this Agreement and the Master Plan construction staging areas will be removed as soon as their useful life has ended.
2. Any fill that is brought into the Park for project work shall be clean and from an approved source.
3. Low level, downward shielded external lighting shall be required for all new development and shall be designed to minimize impacts to adjacent properties.
4. The *Point Defiance Park Historic Property Management Plan, May 15, 2015* (Appendix H to the SEPA Checklist) shall guide all activities within the Park. Specifically, the Secretary of Interior’s Standards shall be the treatment approach for all historic properties in the Park. Further, the model *Inadvertent Discovery Policy* included in Appendix H (at H-11) shall be used for all projects within the Park.

5. The trail development and maintenance recommendations set forth in the *Geotechnical Consultation Erosion and Landslide Evaluation at Point Defiance, June 11, 2004* shall be adhered to.

6. The 10 Minimum storm water requirements set forth on pages 49 and 50 of the *Existing Hydrology and Storm Drainage Requirements Report for Point Defiance Park, June 16, 2015* shall be adhered to. This requirement is broadly applicable to any projects under the Master Plan and is not intended to vest any project or the Master Plan to storm water regulations in effect at the execution of this Agreement.

H. Storm and Sanitary Sewers - Conditions:

1. All improvements shall comply with all applicable requirements contained in the City of Tacoma Stormwater Management Manual, Side Sewer and Sanitary Sewer Availability Manual, Tacoma Municipal Code 12.08, Tacoma Municipal Code 2.19, Tacoma Municipal Code 10.14, Tacoma Municipal Code 10.22 and all other applicable manuals in effect at time of vesting land use actions, building or construction permitting.
2. Provide future projected wastewater flows to the City of Tacoma sanitary system. Projected wastewater flows will allow the City of Tacoma to analyze the wastewater systems ability to accommodate future development within the park.
3. Any utility construction, relocation, or adjustment costs shall be at the applicant's expense.

I. Conditions applicable to building/development permits:

1. All stormwater shall be managed in compliance with the City of Tacoma Stormwater Management Manual (SWMM) that is in effect at the time of full building permit submittal.
2. The applicant shall review and comply with all applicable SWMM Minimum Requirements.
3. At time of development the downstream stormwater conveyance system shall be reassessed to ensure adequate capacity and function. If capacity or function is found to have been impacted then the downstream system shall be cleaned, repaired, or retrofit to provide adequate stormwater capacity and function.
4. Coverage under the NPDES Construction General Permit is required for any clearing, grading, or excavating that will disturb one or more acres of land area and that may discharge stormwater from the site into surface water(s), or into storm drainage systems that discharge to a surface water, per the Washington State Department of Ecology (Ecology). Contact Ecology's Office of Regulatory Assistance at 1-800-917-0043 to determine if any additional requirements are necessary. Additional information is also available online at <http://www.ecy.wa.gov/programs/wq/stormwater/construction/>. City approval does not release the applicant from state or other permitting requirements.
5. At time of building permit the existing sanitary waste system shall be assessed for adequate capacity and function. Capacity shall meet all City of Tacoma standards and/or the current Uniform Plumbing Code.
6. A new development or redevelopment will be classified as large if the proposed wastewater flow will be equal to or greater than 10% of the capacity of the public sanitary sewer system serving the development or if the development will include 100 units or

more. If the project is classified as large, peak daily wastewater flow calculations shall be prepared by a licensed engineer and provided to the city for review. For further information please reference the Side Sewer and Sanitary Sewer Availability Manual.

7. If pumping of sewage is required due to site conditions, plans and calculations for the pump system shall be prepared per City standards and submitted to Environmental Services - Site Development Group for review and approval prior to issuance of a side sewer connection permit.

J. Streets, Driveways, and Sidewalks – Conditions:

1. Congruent with the improvement of the intersection at N Pearl St and N Park Ave, cement concrete sidewalk shall be constructed along N Park Ave, abutting the site, between N Pearl St and the Northeast corner of N Bristol St meeting Public Right Of Way Accessible Guide-lines (PROWAG) and Americans with Disabilities Act (ADA) requirements, and be installed to the approval of the City Engineer. Any utility adjustment shall be at the expense of the applicant.
2. Cement concrete sidewalk shall be constructed along the west side of N Mildred St from Five Mile Drive south to the existing sidewalk along N Mildred St at approximately the intersection of N 51st St meeting Public Right Of Way Accessible Guide-lines (PROWAG) and Americans with Disabilities Act (ADA) requirements, and be installed to the approval of the City Engineer. Any utility adjustment shall be at the expense of the applicant.
3. A Work Order is required for any infrastructure to be constructed within the City of Tacoma Right-of-Way. A licensed professional civil engineer must submit the street plans for review and approval following the City's work order process. To initiate a work order, contact the Public Works Private Development at (253) 591-5760. A performance bond is required for all work orders per TMC 10.22.070.F.

K. Tacoma Power

For utility systems currently operated and maintained by Metro Parks Tacoma within Point Defiance Zoo and Park, Metro Parks will design and construct utility upgrades to meet Tacoma Power material, assembly/construction, and operating standards with the understanding that Tacoma Power may in the future assume operation and maintain these facilities to what will become secondary / service metered locations.

L. Tacoma Water

For utility systems currently operated and maintained by Metro Parks Tacoma within Point Defiance Park, Tacoma Water will design and Metro Parks will construct utility upgrades to meet Tacoma Water material, assembly/construction, and operating standards with the understanding that Tacoma Water will in the future assume ownership, operate, and maintain these facilities up to and including the meter.

Tacoma Water agrees that project specific analysis can be reviewed on an Annual and/or 5-Year Programmatic Review schedule with Metro Parks Tacoma under the DRA and an administrative amendment process.

M. Modifications: Modifications to this agreement must be applied for by written application to the PDS Director. Such modifications will only be approved if the PDS Director determines that they are within the scale and scope of the Master Plan and any project thereunder described in this Agreement and its attachments.

N. Termination: This Agreement may be terminated at any time by either party upon 90 days written notice with or without cause.

O. Miscellaneous Provisions:

1. Dispute Resolution. In the event of a dispute between Metro Parks and the City arising out of or relating to this Agreement, the Metro Parks Executive Director and the City Manager and/or the TPU Director, or their designated representatives, shall review such dispute and options for resolution. If the dispute cannot be resolved by Metro Parks Executive Director and the City Manager, the dispute may be submitted to mediation, and if still not resolved, shall be submitted to binding arbitration in accordance with the rules and procedures set forth in chapter 7.04 RCW, and the judgment or award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

2. Hold Harmless/Indemnification. Metro Parks agrees to indemnify, defend, save, and hold harmless the City, its officials, employees, volunteers, and agents from any and all liability, demands, claims, causes of action, suits, or judgments, including costs, attorney fees, and expenses incurred in connection therewith, of whatsoever kind or nature, arising out of, or in connection with, or incident to, the performance by Metro Parks of this Agreement, except for those damages caused by or arising out of the negligence, wrongful, or willful misconduct of the City, its elected and appointed officials, officers, employees, or agents.

The City agrees to indemnify, defend, save and hold harmless Metro Parks, its officials, employees, volunteers, and agents from any and all liability, demands, claims, causes of action, suits, or judgments, including costs, attorney fees, and expenses incurred in connection therewith, of whatsoever kind or nature, arising out of, or in connection with, or incident to, the performance by the City of this Agreement, except for those damages caused by or arising out of the negligence, wrongful, or willful misconduct of Metro Parks, its elected and appointed officials, officers, employees, or agents.

In the event of liability for damages of any nature whatsoever arising out of the performance of this Agreement by Metro Parks and the City, including claims by Metro Parks or the City's own officers, officials, employees, agents, volunteers, or third parties, caused by or resulting from the concurrent negligence of Metro Parks and the City, their officers, officials, employees, and volunteers, each party's liability hereunder shall only be to the extent of that party's negligence.

In the event of litigation between the parties to enforce rights under this section, reasonable attorney's fees and costs shall be allowed to the prevailing party.

3. No Third Party Beneficiary. Nothing in this Agreement shall be construed as creating any separate entity or joint venture between the Parties, nor shall anything in this Agreement be considered to create any third party beneficiary rights in any third party and is neither expressly nor impliedly enforceable by any third party.

4. Notices. All notices, demands, or requests which may or are required to be given by one party to the other under this Agreement shall be given in writing and hand delivered, or sent by United States registered or certified mail, postage prepaid, return receipt requested, and addressed to the appropriate party's address below. Notices shall be deemed to have been given upon receipt or attempted delivery when delivery is not accepted. Either party may change its address upon notice given to the other.

Metro Parks:

Metropolitan Park District of Tacoma
Attn: Executive Director
4702 South 19th Street
Tacoma, WA 98405

City:

City of Tacoma
Attn: City Manager
747 Market Street, Rm. 1200
Tacoma, WA 98402

5. Enforcement, Interpretation, and Venue. The laws of the state of Washington shall govern the validity, performance, interpretation, and enforcement of this Agreement. Should either party institute arbitration for enforcement or interpretation of any provision contained herein, the venue of such arbitration shall be in Pierce County, Washington.

The prevailing party in any arbitration or litigation arising out of this Agreement shall be entitled to reasonable attorney's fees, costs and expert witness fees.

The Parties agree that each of them were adequately represented by independent Council, and that both Parties shared equally in the drafting of this Agreement. Therefore, this Agreement shall not be construed either for or against the City or Metro Parks as drafter, but this Agreement shall be interpreted in accordance with the general tenor of the language in an effort to reach an equitable result.

6. Integration and Amendment. There are no oral agreements between the parties affecting the meaning, content, purpose, or effect of this Agreement. No additions to, or alterations of the terms of this Agreement shall be valid unless made in writing and formally approved and executed by the duly authorized agents of both parties.

7. Invalid Provisions. If any provision of this Agreement shall be held invalid, the remainder of the Agreement shall not be affected thereby, if such remainder would then continue to serve the purposes and objectives of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

CITY OF TACOMA

METROPOLITAN PARK DISTRICT OF TACOMA

T.C. Broadnax, City Manager

Jack C. Wilson, Executive Director

Peter Huffman, Director, Planning &
Development Services

Name:
Title:

Approved as to Form:

Deputy City Attorney