

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Public Hearing and Adoption of Ordinance No. 276 and No. 277 amending the Comprehensive Plan, Zoning Map, and Development Code to resolve inconsistencies and address changing circumstances
DATE: July 9, 2001
DEPARTMENT: Planning and Development Services
PRESENTED BY: Tim Stewart, Director *A.K. for T.S.*
Rachael Markle, Senior Planner *RM*

EXECUTIVE SUMMARY

As directed by your Council at the June 18, 2001 Workshop, staff noticed a Public Hearing for July 9, 2001 on the proposed Comprehensive Plan, Zoning Map, and Development Code amendments. Following the Public Hearing, Council may decide to: 1) move forward with the consideration and adoption of the amendments as recommended by the Planning Commission and staff; or 2) propose amendments to the recommendation; or 3) delay action on the amendments and request additional information.

The proposed amendments to the Comprehensive Plan text, Comprehensive Plan Land Use map, and one amendment to the Development Code recommended by the Planning Commission, were distributed to your Council with the June 18, 2001 Agenda Packet.

RECOMMENDATION

Hold a Public Hearing on the proposed amendments to the Comprehensive Plan and Development Code and adopt Ordinance 276 amending the Comprehensive Plan and Ordinance 277 amending the Development Code.

Approved By: City Manager *KTB* City Attorney *[Signature]*

BACKGROUND/ANALYSIS

There are a number of issues that were identified in June 18th Workshop report as Text and Map Amendments that Council is likely to hear testimony regarding. The following chart summarizes these issues in preparation for the Public Hearing.

Comprehensive Plan Text, Land Use Map, and Official Zoning Map Amendment Issues

Amendment	Summary of Issue
Log #003B: Add new policy LU44 to include: "The base height for industrial uses will be no greater than 50 feet unless a master plan or sub area plan is completed."	Planning Commission recommends adoption of the amendment as proposed. Staff does not support this recommendation based on the fact that the Comprehensive Plan already contains goals and policies to protect residential development from the impacts of adjacent higher intensity uses and the Development Code provides for safeguards between Residential and Industrial Zones. In addition, Ms. Williamson, the author of the amendment, has also proposed a Development Code Amendment requesting a height limit of 50 ft. for industrial uses adjacent to residential zones that will be considered later this year.
Special Study Areas Log #'s 012, 013, and 014 (Folio of Maps Areas 6, 9, and 10) Establish the Paramount, Briarcrest, and Ballinger Special Study Areas.	Staff and Planning Commission recommended that these areas receive additional planning and analysis to ensure that the growth as proposed by the Comprehensive Plan can be accommodated prior to implementation. A lot of public comment and questions were asked in relation to these amendments. These amendments are not seen as contentious, but are worth noting due to the level of inquiry they generated.
Area 3 Bundle B: Highland Park Place Medical Center	The Medical Center is currently zoned R-48 w/ a P-suffix restricting uses to medical/dental offices. The Comprehensive Plan designated this parcel as low density. A few of the neighbors testified about the need to implement the Comprehensive Plan and rezone the property to R-6 to achieve consistency and protect the single-family neighborhood. The owner and many tenants of the Medical/Dental Center testified that the R-6 zone would render their property as non-conforming and therefore were opposed to being rezoned to R-6. The Planning Commission recommended amending the Comprehensive Plan designation to Mixed Use and rezoning the property to Office.

**Comprehensive Plan Text, Land Use Map, and Official Zoning Map
Amendment Issues, cont.**

Amendment	Summary of Issue
Area 8 Bundle F (located south of North City on the West side of 15 th Avenue NE)	The Planning Commission and staff recommend changing the Comprehensive Plan designation on these parcels from High Density residential to Low Density Residential to match the current zoning and development of these sites. The Planning Commission received comments and testimony from a few of these property owners requesting the implementation of the Comprehensive Plan and increased density zoning. The Planning Commission and staff based their recommendation on the following: ▪ The area is predominantly comprised of single family residential uses. ▪ It is important for the success of the North City Subarea Plan to focus development within the delineated planning boundary. ▪ These parcels along 15th Avenue NE, south of North City are only one parcel deep and would require parcel consolidation to actually develop at a high-density level. ▪ Many of the parcels along 15th Avenue NE, south of North City have topographical changes that would restrict the ability to develop at a high-density level.

COMPREHENSIVE PLAN TEXT AND DEVELOPMENT CODE AMENDMENTS

Due to the volume and complexity of the amendments, your Council may choose to organize the discussion by addressing the Comprehensive Plan text amendments and the one amendment to the Development Code text first. Your Council may call for discussion on each text amendment separately; or call for discussion on only those proposed amendments to text that Council has questions regarding or that Council is not in general agreement with the Planning Commission recommendation. Ordinance No. 276 adopts the recommended amendments to the Comprehensive Plan text and maps and Ordinance No. 277 adopts the recommended amendments to the Development Code text and Official Zoning Map.

Staff would like to remind your Council that there is only one amendment that is recommended by the Planning Commission and not supported by staff. This is Comprehensive Plan text amendment 003B. Amendment 003B proposes to add new text with the purpose of ensuring compatibility of industrial development height with adjacent low and medium density residential zones. Staff finds that the Comprehensive Plan already includes goals and policies to ensure compatibility between differing zones. Further, the Development Code provides for regulatory safeguards between residential and industrial zones. Ordinance

No. 276 adopts the recommended amendments to the Comprehensive Plan text with the exception of amendment 003B. If your Council would like to adopt amendment 003B, Ordinance 276 must be amended. *(Note: The table found in the notebook distributed as part of the June 18th Staff Report under tab A (page 03) contains a summary and the Planning Commission recommendation for each amendment and could be a helpful resource for working through consideration and adoption.)*

COMPREHENSIVE PLAN LAND USE MAP AND ZONING MAP AMENDMENTS

In regard to organizing the discussion on the recommended amendments to the Comprehensive Plan Land Use map and Zoning Map, staff recommends consideration of the map amendments by Area beginning with Area #1. Only those bundles that Council has questions regarding or that Council is not in agreement with the Planning Commission would be identified for discussion. Amendments to the Comprehensive Plan land use designations map are contained in Ordinance No. 276 and amendments to the Official Zoning Map are contained in Ordinance No. 277. *(Note: The table found in the notebook distributed as part of the June 18th Staff Report under tab E (page 56) and the Folio of maps list the Planning Commission recommendation on each map amendment and could be a helpful resource for working through consideration and adoption.)*

Notes and Errata Regarding Proposed Map Amendments

In reference to the Folio of Maps, the only parcels that are under consideration for change are:

1. Those for which a site specific land use designation change application was received, OR
2. Where the current parcel designation is inconsistent.

Each inconsistent parcel has been grouped into a "bundle" with other parcels that have similar conditions and/or recommendation for change. Bundles are shown as a heavy line drawn around a group of "inconsistent" parcels (i.e. those parcels that have a pattern on them). In some cases the bundle line may enclose parcels that are currently consistent (i.e. those parcels that do not have pattern). These parcels are not under consideration for map change.

Exceptions:

Bundle 2-C. The changes proposed for this bundle are for ALL parcels that lie within the "bundle boundary" line shown on the map (which includes parcels that are already consistent). In this case the Comprehensive Plan Land Use map will be amended to change EACH of these parcels from *High Density Residential* to *Mixed Use*. (See Attachment A: an insert for the Folio of Maps, more accurately illustrates the proposed map changes)

Bundle 2-F. All of the parcels proposed for change in this bundle are identified by the patterned overlay. However, there is one parcel that was inadvertently not included in the patterned overlay that is also inconsistent. This parcel is marked with an asterisk on Attachment A. Therefore, all of the parcels with a patterned overlay, including the parcel marked with an asterisk on Attachment A are proposed to be identified on the Comprehensive Plan land use map as Mixed Use and on the Zoning Map as R-8. Although the parcel does not show up on the Folio of Maps as being under consideration for a map amendment, the property owner and occupant for this parcel were notified of the proposed change.

The Folio of Maps also shows inconsistent parcels that have not been grouped into a bundle, for examples refer to the Folio of Maps: Area 2 in the vicinity of Aurora Village. These are not grouped into a bundle because their inconsistency is resolved by a text amendment to the Comprehensive Plan (the addition of *Regional Business* as an appropriate zoning district for the *Community Business* Land Use Designation).

Attachments B and C

Attachment B, Ordinance 276 adopts the amendments to the Comprehensive Plan text and the Comprehensive Plan land use map that are recommended by the Planning Commission with the exception as of Log # 003B as previously noted. Attachment C, Ordinance 277 adopts the amendments to the Development Code including the amendments to the Official Zoning map that are recommended for adoption by the Planning Commission.

RECOMMENDATION

Hold a Public Hearing on the proposed amendments to the Comprehensive Plan and Development Code and adopt Ordinance 276 amending the Comprehensive Plan and Ordinance 277 amending the Development Code.

ATTACHMENTS

Attachment A

Area A insert for Folio of Maps

Attachment B

Ordinance 276

Attachment C

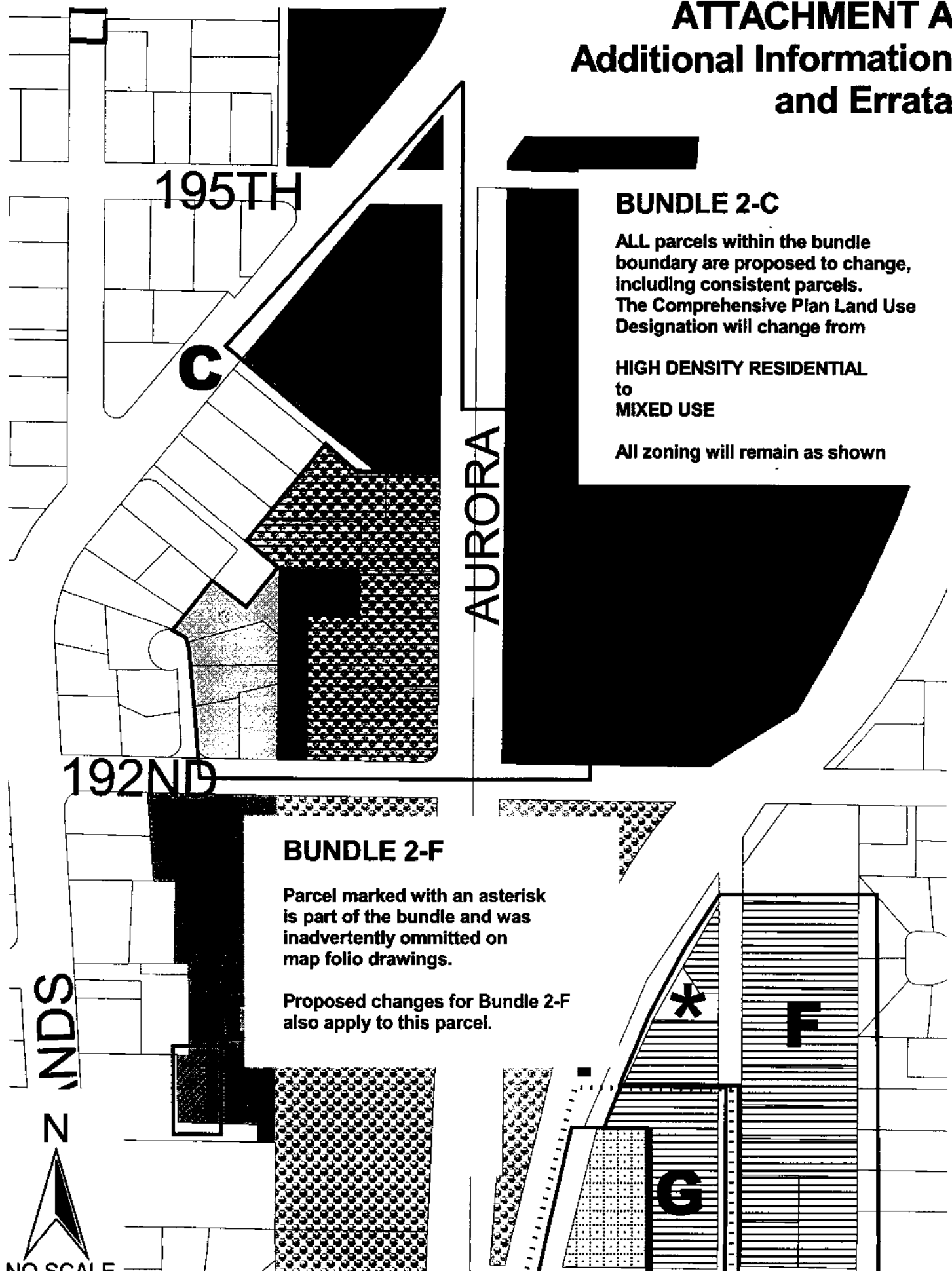
Ordinance 277

Copies of the June 18, 2001 Staff Report, which includes the proposed amendments to the Comprehensive Plan and Development Code and supporting documentation, are available for viewing at the following locations:

- City Clerk's Office
17544 Midvale Avenue North
Shoreline, WA
- Planning and Development Services Office
1110 N. 175th Street, Suite 107
Shoreline, WA
- Shoreline Library
342 NE 175th Street
Shoreline, WA
- Richmond Beach Library
19601 21st Avenue NW
Shoreline, WA
- Eastside Neighborhood Police Center
521 NE 165th Street
Shoreline, WA
- Westside Neighborhood Police Center
630 NW Richmond Beach Road
Shoreline, WA

ATTACHMENT A

Additional Information and Errata



ORDINANCE NO. 276

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON AMENDING THE LAND USE ELEMENT INCLUDING FIGURE LU-1 LAND USE DESIGNATIONS, SHORELINE MASTER PROGRAM ELEMENT, PARKS, OPEN SPACE AND RECREATION SERVICES PLAN, AND TRANSPORTATION CAPITAL FACILITIES ELEMENT OF THE COMPREHENSIVE PLAN; AND AMENDING ORDINANCE NO. 178.

WHEREAS, Shoreline's first Comprehensive Plan adopted on November 23, 1998 includes Policy LU7 – "Ensure that the Shoreline City Council can amend the Comprehensive Plan once a year, as established in the Growth Management Act, through an amendment process..."; and

WHEREAS, the City adopted Title 20, the Development Code, on June 12, 2000 which is generally consistent with the Comprehensive Plan adopted in 1998; and

WHEREAS, the City in accordance with the Washington State Growth Management Act (GMA) RCW36.70A.130 which states " Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them" developed an annual Comprehensive Plan review process; and

WHEREAS, the City in accordance with GMA is proposing to reconcile inconsistencies between the Comprehensive Plan adopted in 1998 and the Development Code adopted in 2000 including the reconciliation of all parcels in the City that currently have zoning that is not consistent with the Comprehensive Plan land use designations by amending the Title 20: Zoning Map and the Comprehensive Plan Figure LU-1: Land Use Designations; and

WHEREAS, the City received six (6) complete applications from the public and four from staff to amend the following sections of the Comprehensive Plan: Land Use including Figure LU-1 Land Use Designations, Shoreline Master Program, Parks, Open Space and Recreation Services Plan, and Transportation Capital Facilities; and

WHEREAS, an extensive public participation process was conducted to develop and review amendments to the Comprehensive Plan as part of the annual review including:

- Staff presented the Planning Commission with a report on the process for the annual amendment cycle and review of the application for amendments at the July 20, 2000 Planning Commission meeting.
- Comprehensive Plan amendment applications were made available at the October 5, 2000 Planning Commission Open House.
- Staff and the Planning Commission developed the methodology and criteria for addressing the amendments to the Comprehensive Plan land use map and Zoning map at Planning Commission Workshops on November 16, 2000 and December 7, 2000.
- Customized written notices were mailed to all property owners and occupants of parcels that were proposed for either a change in Comprehensive Land Use designations and/or zones.
- Staff conducted three Workshops with the Planning Commission to review the proposed amendments on March 15, 2001, April 5, 2001, and April 19, 2001;
- The Planning Commission held a Public Hearing on the proposed amendments on May 17, 2001.
- The Planning Commission held a Special Meeting on May 24, 2001 to make its recommendation to Council on the proposed amendments.
- The City Council conducted a Workshop on June 18, 2001 to review the Planning Commission recommendation on the proposed amendments; and

WHEREAS, a SEPA Determination of Nonsignificance was issued on May 3, 2001 in reference to the proposed amendments to the Comprehensive Plan and Development Code; and

WHEREAS, the Planning Commission unanimously recommend approval of the proposed amendments at the May 24, 2001 Special Meeting; and

WHEREAS, the City Council conducted a Public Hearing on this Ordinance on July 9, 2001; and

WHEREAS, the proposed amendments were submitted to the State Department of Community Developments for comment pursuant WAC 365-195-820 and its comments have been received and are favorable; and

WHEREAS, The Council finds that this ordinance complies with the adoption requirements of the Growth Management Act, Chapter 36.70A. RCW ; and

WHEREAS, The Council finds that the amendments adopted by this ordinance meet the criteria in Title 20 for adoption of amendments to the Comprehensive Plan;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE,
WASHINGTON DO ORDAIN AS FOLLOWS:**

Section 1. Amend the Comprehensive Plan. The Shoreline Comprehensive Plan as adopted by Ordinance No. 178, is hereby amended as follows:

- a) Land Use Elements are amended as set forth in Exhibit A attached hereto and incorporated herein;
- b) Figure LU-1: Land Use Designations are amended to reflect changes described in Exhibit B attached hereto and incorporated herein;

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. Effective Date and Publication. A summary of this Ordinance consisting of the title shall be published in the official newspaper and the Ordinance shall take effect five days after publication.

PASSED BY THE CITY COUNCIL ON July 9, 2001.

Mayor Scott Jepsen

ATTEST:

APPROVED AS TO FORM:

Sharon Mattioli, CMC
City Clerk

Ian Sievers
City Attorney

Date of Publication:

Effective Date:

COMPREHENSIVE PLAN LAND USE ELEMENT

- LU24: The permitted base density for this designation will not exceed 6 dwelling units per acre ~~and the base height will not exceed 30 feet~~, unless a neighborhood plan, subarea plan or special district overlay plan/zone has been approved.
- LU28: The permitted base density for this designation will not exceed 12 dwelling units per acre ~~and the base height will not exceed 35 feet~~, unless a neighborhood plan, subarea plan or special district overlay plan/zone has been approved.
- LU31: The permitted base density for this designation will not exceed 48 dwelling units per acre ~~and the base height will not exceed 35 feet~~, unless a neighborhood plan, subarea plan or special district overlay plan has been approved.
- LU32: • ~~does not exceed six stories in height;~~
- LU35: ~~The base height for this designation will be 35 feet unless a neighborhood plan, subarea plan, or special district overlay plan/zone has been approved.~~
- LU38: ~~The base height for this designation shall be 60 feet unless a neighborhood plan, subarea plan or special district overlay plan/zone has been approved.~~
- LU38.1: ~~The base height for this designation will be 65 feet unless a neighborhood plan, subarea plan, or special district overlay plan/zone has been approved.~~
- LU67: ~~The base height for this designation will be 35 feet unless a facilities master plan has been approved, a conditional or special use permit has been issued, or the underlying zone permits a greater height.~~
- LU68: ~~The base height for this designation will be 35 feet unless a facilities master plan has been approved, a conditional or special use permit has been issued, or the underlying zoning permits a greater height.~~

Land Use Designations

Low Density Residential

The permitted base density for this designation will not exceed 6 dwelling units per acre ~~and the base height will not exceed 30 feet~~, unless a neighborhood plan, subarea plan or a special district overlay plan has been approved.

Medium Density Residential

The permitted base density for this designation will not exceed 12 dwelling units per acre ~~and the base height will not exceed 35 feet~~, unless a neighborhood plan, subarea plan or special district overlay plan has been approved.

High Density Residential

The permitted base density for this designation will not exceed 48 dwelling units per acre ~~and the base height will not exceed 35 feet~~, unless a neighborhood plan, subarea plan or special district overlay plan has been approved.

ORDINANCE 276 EXHIBIT A

Community Business

~~The base height for this designation will be 60 feet unless a neighborhood plan, subarea plan or special district overlay plan has been approved.~~

Appropriate zoning designations for this area might include the Aurora Avenue Special Overlay District, Economic Redevelopment Special Overlay District, Pedestrian Oriented Commercial Special Overlay District, RB, NB, CB, or, O, R-12, R-18, R-24, or R-48.

Regional Business

~~The base height for this designation will be 65 feet unless a neighborhood plan, subarea plan, or special district overlay plan has been approved.~~

Appropriate zoning designations for this area might include the Aurora Avenue Special Overlay District, Economic Redevelopment Special Overlay District, Pedestrian Oriented Commercial Special Overlay District, R-12, R-18, R-24, R-48, CB, O or RB.

Mixed Use

~~The base height for this designation will be 35 feet unless a neighborhood plan, subarea plan, or special district overlay plan has been approved.~~

This designation is intended to encourage the development of pedestrian oriented places, with architectural interest, that integrate a wide variety of retail, office and service uses with medium to high density residential uses. Appropriate zoning designations for this area might include Mixed Use Special Overlay District, Pedestrian Oriented Commercial Special Overlay District, NB, CB, O, I, RB, R-8, R-12, R-18 and/or, R-24, or R-48.

Public Facilities

~~The base height for this designation will be 35 feet unless a facilities master plan has been approved, a conditional or special use permit has been issued or unless the underlying zone district permits a greater height.~~

Single Family Institution

~~The base height for this designation will be 35 feet unless a facilities master plan has been approved, a conditional or special use permit has been issued or unless the underlying zoning permits a greater height.~~

It is anticipated that the underlying zoning for this designation shall remain the same unless adjusted by a formal amendment to this plan a master plan is adopted creating a special district.

Special Study Area

~~The base height for this designation will be 35 feet unless a neighborhood plan, subarea plan, or special overlay district plan has been approved.~~

COMPREHENSIVE PLAN TRANSPORTATION ELEMENT

T30: Require all commercial, multifamily and residential short plat and long plat developments to ~~construct~~ provide for sidewalks or separated trails.

COMPREHENSIVE PLAN COMMUNITY FACILITIES ELEMENT

CF20 ~~Investigate the use of impact fees to help pay for the costs of new development.~~
Provide a program to allow developers to pay a fee (e.g. an impact fee) if appropriate in lieu of constructing required street frontage improvements, including sidewalks and stormwater facilities.

ORDINANCE 276 EXHIBIT A

LU71 The Special Study Area Designation should be applied to some areas of the community which might be appropriate for further study. These areas are designated for future subarea planning, watershed planning, special districts, neighborhood planning, or other study. The base height for this designation shall be 35 feet unless a neighborhood plan, subarea plan, or special overlay district plan/zone has been approved. It is anticipated that the underlying zoning for this designation shall remain.

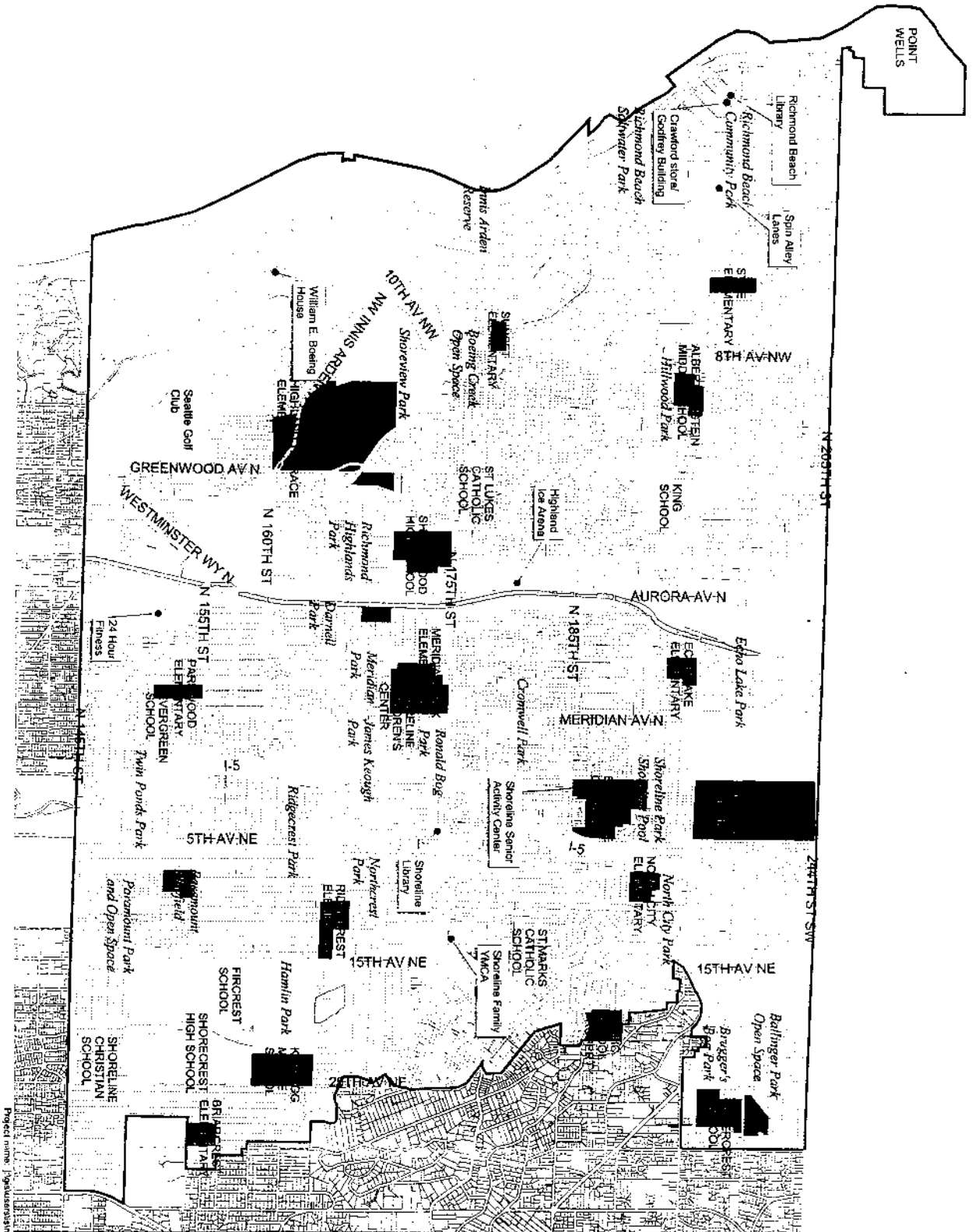
LU71.1: Establish the Paramount District Special Study Area. The study area would be centered around the business district at N 145th Street and 15th Avenue NE and roughly bound by N 150th Street on the north, N 145th Street on the south, between 10th and 12th Avenue NE on the west and 23rd Avenue NE on the east. The district shall be formed in accordance with the drainage basin located in the approximate area.

LU71.2: Establish the Briarcrest Special Study Area. The study area would be centered around the south end of the Briarcrest Neighborhood and roughly bound by N 150th Street on the north, N 145th Street on the south, 23rd Avenue NE on the west and 31st Avenue NE on the east. The district shall be formed in accordance with the drainage basin located in the approximate area.

LU71.3: Establish the Ballinger Special Study Area. The study area would be centered around the neighborhood area southwest of the Ballinger Business District and roughly bound by N 205th Street on the north, N 195th and N 196th Street on the south, I-5 on the west and between Forest Park Drive NE and Ballinger Way NE on the east. The district shall be formed in accordance with the drainage basin located in the approximate area.

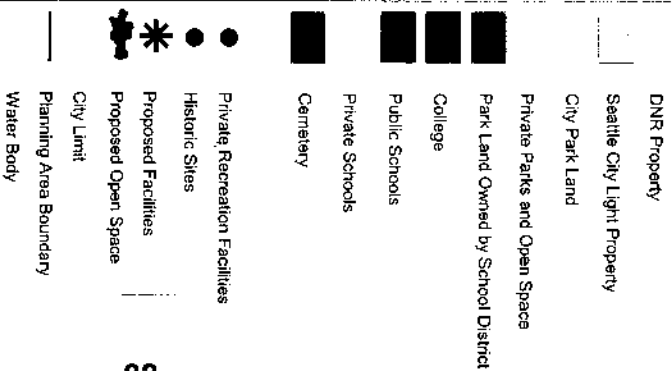
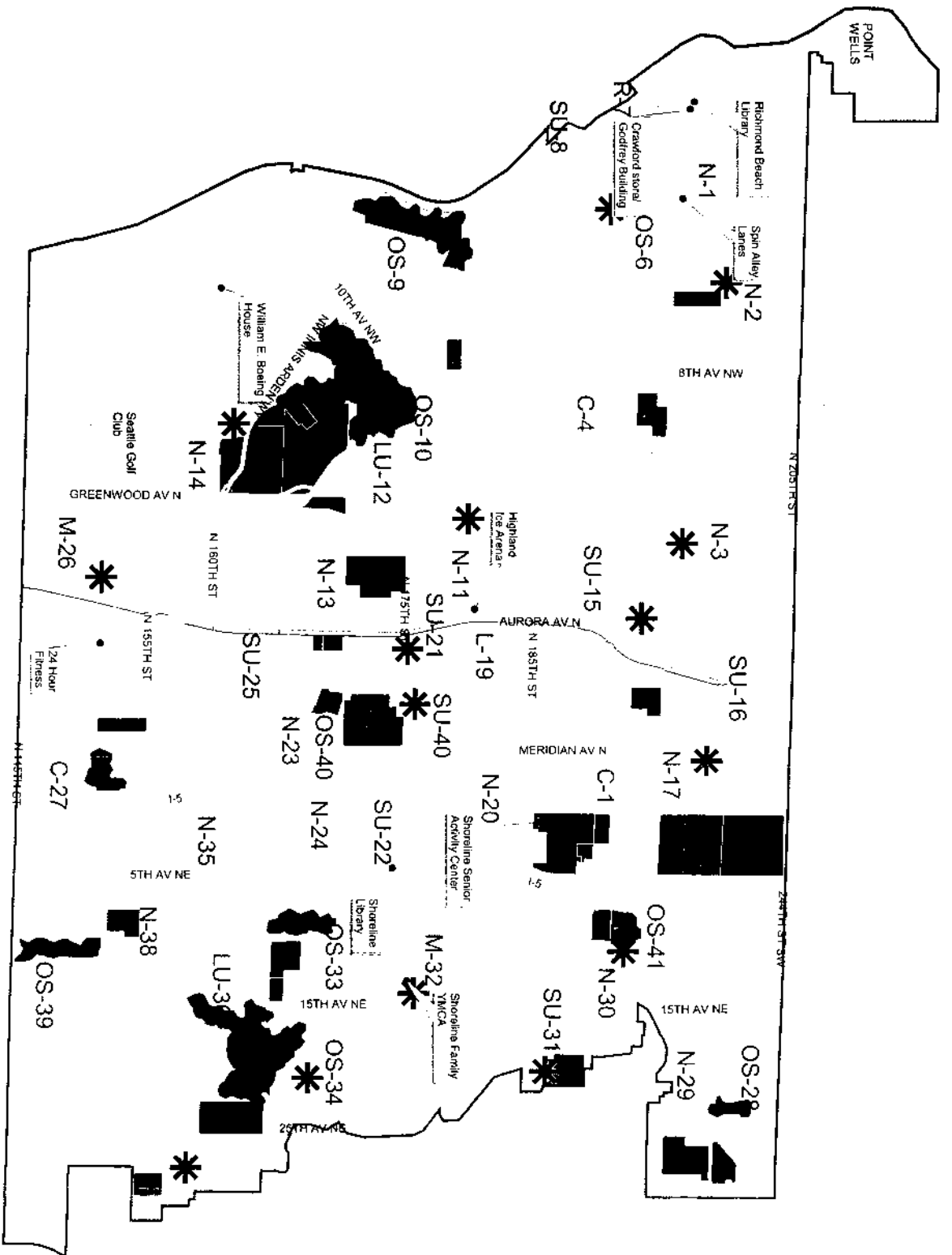
**Existing Park,
Recreation & Open
Space Areas**

- | | |
|--|------------------------------------|
| | DNR Property |
| | Seattle City Light Property |
| | City Park Land |
| | Private Parks and Open Space |
| | Park Land Owned by School District |
| | College |
| | Public Schools |
| | Private Schools |
| | Cemetery |
- 81

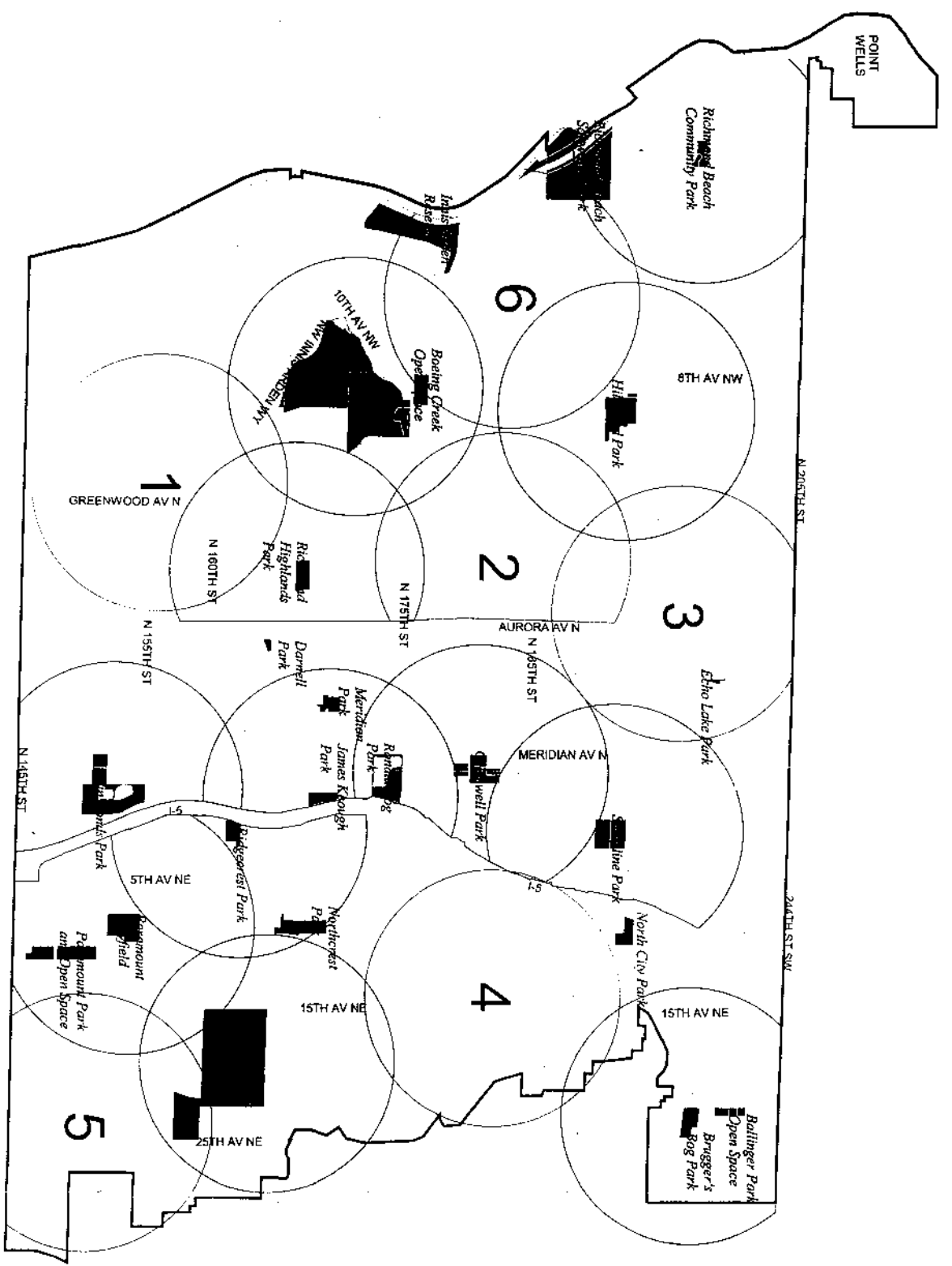


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Plan



Neighborhood Park Service Area



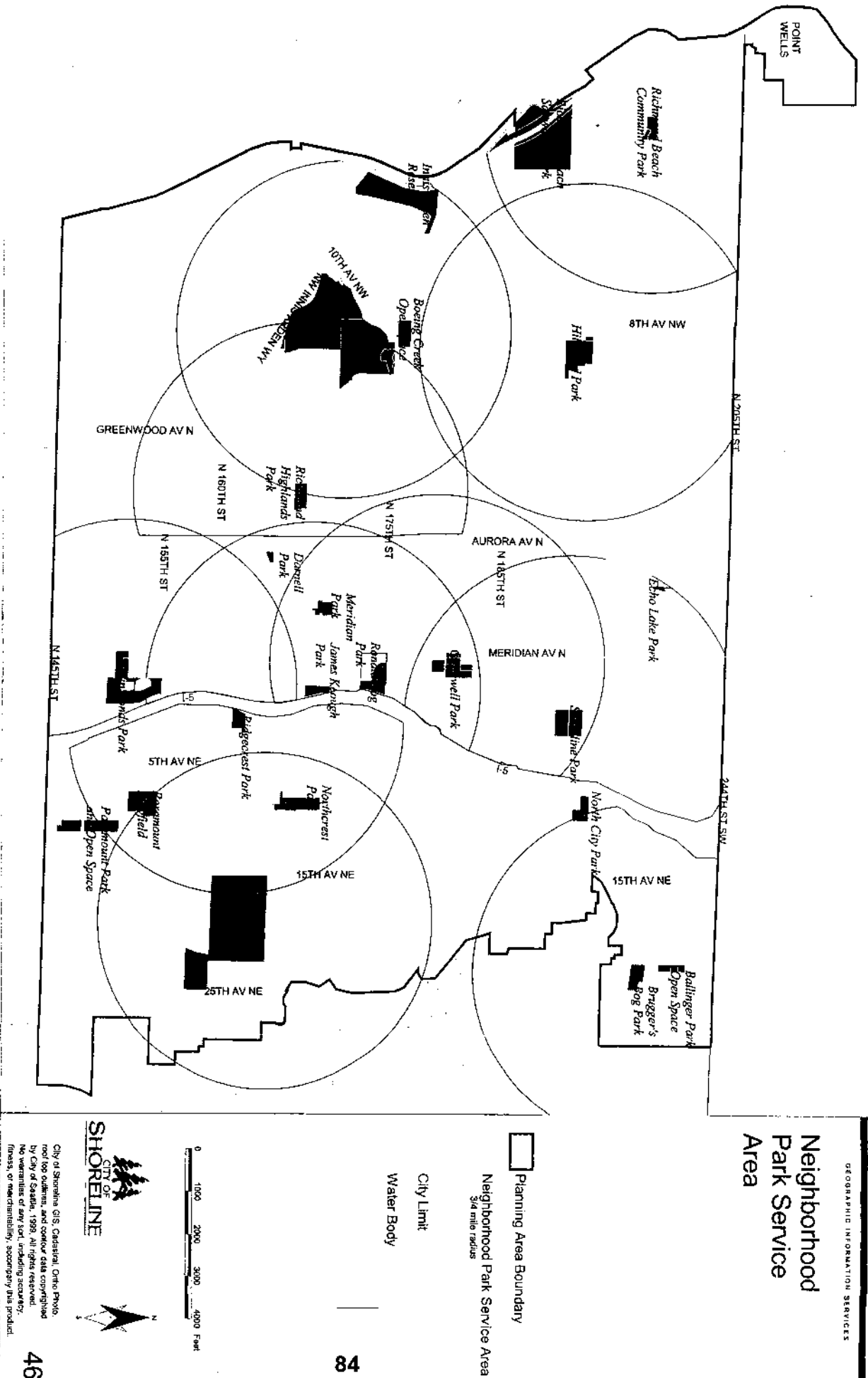
- ☐ Planning Area Boundary
- ☐ Proposed Areas
- Neighborhood Park Service Area
1/2 mile radius

City Limit
Water Body

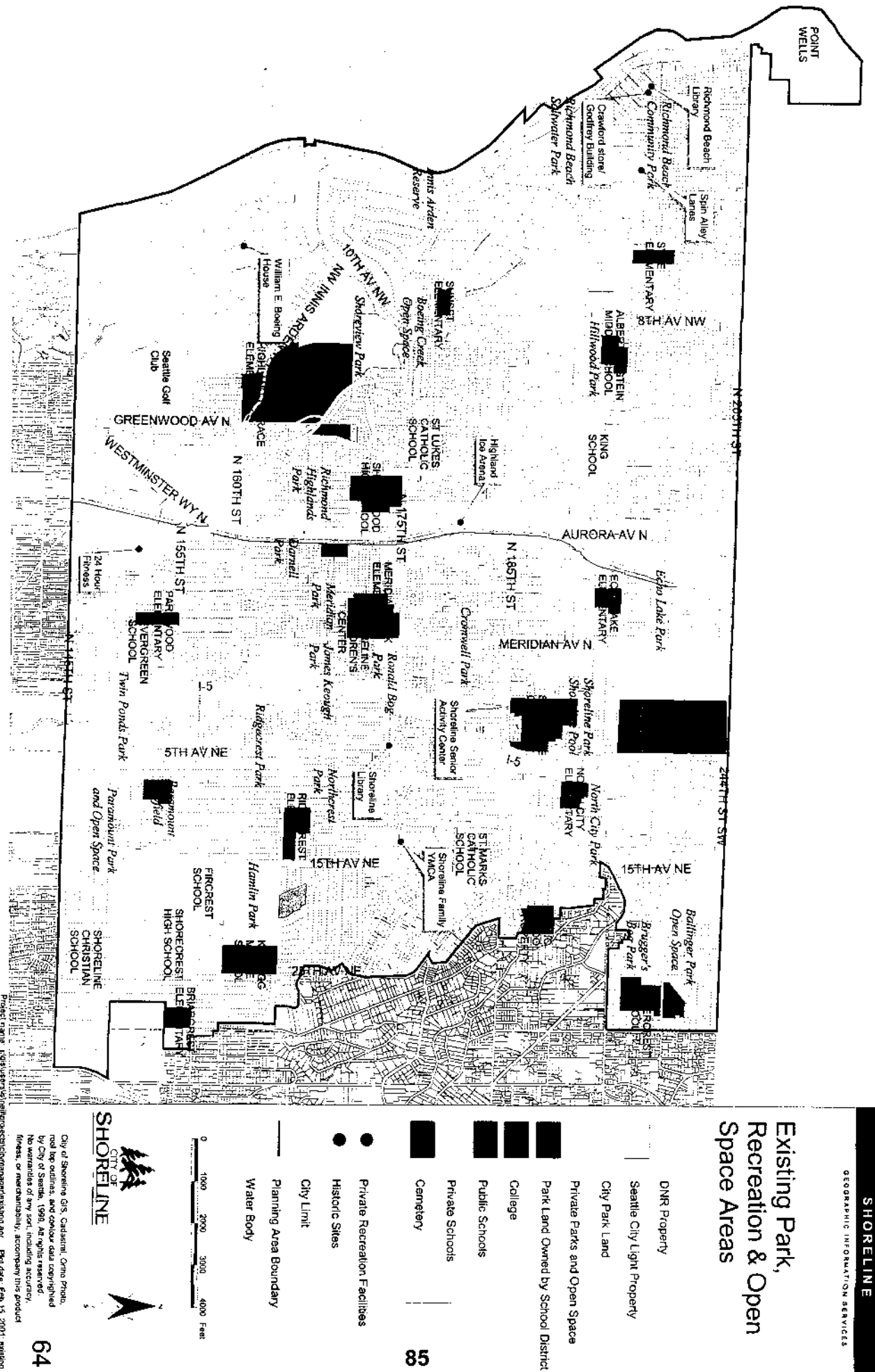


City of Shoreline GIS, Cadastre, Ortho Photo, roof top outlines, and contour data copyrighted by City of Seattle, 1998. All rights reserved. No warranties of any sort, including accuracy, fitness, or merchantability, accompany this product. Project name: 1:\gis\users\shoreline\projects\shoreline\maparea\shoreline.aprx Map date: Feb 15, 2001, estlin

Neighborhood Park Service Area



**Existing Park,
Recreation & Open
Space Areas**



ORDINANCE 276 EXHIBIT B

FOLIO OF MAPS

ORDINANCE NO. 277

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON AMENDING THE DEVELOPMENT CODE TO RECONCILE INCONSISTENCIES BETWEEN THE COMPREHENSIVE PLAN AND THE DEVELOPMENT CODE INCLUDING THE RECONCILIATION OF ALL PARCELS IN THE CITY THAT CURRENTLY HAVE ZONING THAT IS NOT CONSISTENT WITH THE COMPREHENSIVE PLAN LAND USE DESIGNATIONS; AND AMENDING 20.40.130 THE NON-RESIDENTIAL USE TABLE TO INCLUDE PROFESSIONAL OFFICES AS A CONDITIONAL USE IN R-18, R-24, R-48 ZONES AND AS A PERMITTED USE IN NB, O, CB, RB, AND I ZONES; AND AMENDING SHORELINE MUNICIPAL CODE TITLE 20

WHEREAS, the City adopted Title 20, the Development Code, on June 12, 2000 which is generally consistent with the Comprehensive Plan adopted in 1998;

WHEREAS, the City in accordance with the Washington State Growth Management Act (GMA) RCW36.70A.130 which states " Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them" developed an annual Comprehensive Plan review process; and

WHEREAS, the City in accordance with GMA is proposing to reconcile inconsistencies between the Comprehensive Plan adopted in 1998 and the Development Code adopted in 2000 including the reconciliation of all parcels in the City that currently have zoning that is not consistent with the Comprehensive Plan land use designations by amending the Title 20: Zoning Map and the Comprehensive Plan Figure LU-1: Land Use Designations; and

WHEREAS, the City received two (2) complete applications from the public for site specific amendments to the Official Zoning Map that addressed changing circumstances and the City has proposed amendments to the Official Zoning Map to resolve inconsistencies between the Comprehensive Plan land use designations and to address changing circumstances; and

WHEREAS, the Planning Commission proposed an amendment to the Title 20 to include professional offices as a conditional use in high density residential zones to prevent the creation of nonconforming professional office uses in the process of resolving inconsistencies between the Comprehensive Plan Figure LU-1: Land Use Designations and the Zoning Map; and

WHEREAS, an extensive public participation process was conducted to develop and review amendments to the Comprehensive Plan and Development Code including:

- Staff presented the Planning Commission with a report on the process for the annual amendment cycle and review of the application for amendments at the July 20, 2000 Planning Commission meeting.
- Comprehensive Plan amendment applications were made available at the October 5, 2000 Planning Commission Open House.
- Staff and the Planning Commission developed the methodology and criteria for addressing the amendments to the Comprehensive Plan land use map and Zoning map at Planning Commission Workshops on November 16, 2000 and December 7, 2000.
- Customized written notices were mailed to all property owners and occupants of parcels that were proposed for either a change in Comprehensive Land Use designations and/or zones;
- Staff conducted three Workshops with the Planning Commission to review the proposed amendments on March 15, 2001, April 5, 2001, and April 19, 2001.
- The Planning Commission held a Public Hearing on the proposed amendments on May 17, 2001.

- The Planning Commission held a Special Meeting on May 24, 2001 to make its recommendation to Council on the proposed amendments.
- The City Council conducted a Workshop on June 18, 2001 to review the Planning Commission recommendation on the proposed amendments; and

WHEREAS, a SEPA Determination of Nonsignificance was issued on May 3, 2001 in reference to the proposed amendments to the Comprehensive Plan and Development Code; and

WHEREAS, the Planning Commission unanimously recommend approval of the proposed amendments at the May 24, 2001 Special Meeting; and

WHEREAS, the City Council conducted a Public Hearing on this Ordinance on July 9, 2001; and

WHEREAS, the proposed amendments were submitted to the State Department of Community Developments for comment pursuant WAC 365-195-820 and its comments have been received and are favorable; and

WHEREAS, The Council finds that the amendments adopted by this ordinance are consistent with and implement the Shoreline Comprehensive Plan and complies with the adoption requirements of the Growth Management Act, Chapter 36.70A. RCW ; and

WHEREAS, The Council finds that the amendments adopted by this ordinance meet the criteria in Title 20 for adoption of amendments to the Development Code;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE,
WASHINGTON DO ORDAIN AS FOLLOWS:**

Section 1. Amendment. Shoreline Municipal Code Section 20.40.130 is amended as set forth in Exhibit, "A" which is attached hereto and incorporated herein.

Section 2. Amendment; Zoning Map. The Official Zoning Map is amended as set forth in Exhibit "B" which is attached hereto and incorporated herein.

Section 3. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 4. Effective Date and Publication. A summary of this Ordinance consisting of the title shall be published in the official newspaper and the Ordinance shall take effect five days after publication.

PASSED BY THE CITY COUNCIL ON July 9, 2001.

Mayor Scott Jepsen

ATTEST:

APPROVED AS TO FORM:

Sharon Mattioli, CMC
City Clerk

Ian Sievers
City Attorney

Date of Publication:
Effective Date:

ORDINANCE NO. 277 EXHIBIT A

20.40.130 Non-residential uses.

NAICS #	SPECIFIC LAND USE	R4-R6	R8-R12	R18-R48	NB & O	CB	RB & I
	RETAIL/SERVICE TYPE						
532	Automotive Rental and Leasing					P	P
81111	Automotive Repair and Service				P	P	P
451	Book and Video Stores/Rental (excludes Adult Use Facilities)			C	P	P	P
513	Broadcasting and Telecommunications						P
812220	Cemetery, Columbarium	C-i	C-i	C-i	P-i	P-i	P-i
	Churches, Synagogue, Temple	C	C	P	P	P	P
	Construction Retail, Freight, Cargo Service						P
	Day Care Facilities	P-i	P-i	P	P	P	P
722	Eating and Drinking Establishments (Excluding Gambling Uses)	C-i	C-i	C-i	P-i	P-i	P-i
812210	Funeral Home/Crematory	C-i	C-i	C-i		P-i	P-i
447	Gasoline Service Stations				P	P	P
	General Retail Trade/Services				P	P	P
811310	Heavy Equipment and Truck Repair						C
481	Helistop			S	S	S	C
485	Individual Transportation and Taxi					C	S
812910	Kennel or Cattery					C-i	P-i
31	Light Manufacturing						S
441	Motor Vehicle and Boat Sales						P
	Professional Office			C	P	P	P
5417	Research, Development and Testing						P
484	Trucking and Courier Service					P-i	P-i
541940	Veterinary Clinics and Hospitals				P-i	P-i	P-i
	Warehousing and Wholesale Trade						P
	Wireless Telecommunication Facility	P-i	P-i	P-i	P-i	P-i	P-i

P = Permitted Use

C = Conditional Use

S = Special Use

-i = Indexed Supplemental Criteria

FOLIO OF MAPS

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Introduction of Ordinance No. 280 Granting Puget Sound Energy, Inc., A Non-Exclusive Franchise To Operate A Natural Gas Distribution System In The City Of Shoreline
DEPARTMENT: City Manager's Office
PRESENTED BY: Kristoff T. Bauer, Assistant to the City Manager

EXECUTIVE / COUNCIL SUMMARY

On August 28, 2000, Council took action to extend Puget Sound Energy's (PSE) franchise for six months to provide additional time to negotiate a replacement franchise. That extension expired in February 2001. Presented to Council consideration is a proposed franchise with PSE that is the culmination of those negotiations.

As the Council may recall, City regulations require that utilities operating in the City's right-of-way either hold a franchise agreement prior to obtaining site specific permits to work in the right-of-way or comply with a more detailed Right-of-way Site Permit process for each work location. It is in the best interest of both parties that PSE hold a franchise consistent with City policy and sufficient to protect the City's interests. Despite the best efforts of the parties, we have not been able to reach agreement on all the terms of a proposed franchise. Indemnification language is the key issue remaining between the parties.

Staff is recommending that Council adopt the proposed franchise with indemnification language consistent with that recommended by both the City Attorney and the City's risk management staff including the Washington Cities Insurance Authority (WCIA). PSE will then have sixty days to except the proposed franchise as offered or choose to comply with the City's Right-of-way Site permit process.

RECOMMENDATION

This item is for discussion purposes only. With Council concurrence, staff will schedule the proposed ordinance for adoption on July 23, 2001.

Approved By: City Manager  City Attorney _____

BACKGROUND / ANALYSIS

Upon incorporation, the City was required by state law to grant utilities that held a valid King County franchise a City franchise for the remaining term of the King County franchise or five years, whichever was less. Washington Natural Gas was granted a 25 year franchise to operate in the Shoreline area by King County on December 19, 1994. On August 14, 1995, your Council adopted Ordinance No. 45 granting Washington Natural Gas a franchise for five years from the date of incorporation through August 31, 2000 under the terms of that prior King County franchise consistent with state law. Puget Sound Energy (PSE) has since purchased Washington Natural Gas.

Staff began negotiating with PSE representatives in March 2000. The initial response from PSE staff to the draft agreement provided by the City at that time was positive and no substantive issues were raised. Unfortunately, the PSE representative was re-assigned, and no one from PSE followed up to ensure that the City received a response. City staff followed up in May 2000 and was informed of the change in personnel and that the new representative should be contacting the City. This did not occur apparently due in part to the belief of PSE personnel that the King County franchise was in place for several more years.

After several follow-up communication attempts, staff was finally successful in meeting with the new PSE representative on July 18, 2000. The confusion over the prior King County franchise was resolved and the new representatives communicated their commitment to working with the City to quickly develop a new franchise agreement. On August 28, 2000 staff recommended and Council adopted Ordinance No. 248 amending Ordinance No. 45 to extend the franchise of PSE for six-months. Staff and PSE representatives felt at that time this would provide sufficient time for the parties to reach agreement.

In early 2001, the parties had cleared most outstanding issues, but grew concerned that final agreement would not be reached prior to February 2001 termination date of PSE's current franchise. The parties agreed that focusing on continued dialogue, despite the risk of a short lapse of PSE's franchise, was preferred to diverting resources to seeking an additional extension.

Proposed Franchise

The proposed franchise, while containing numerous changes requested by PSE, remains consistent with other franchises issued by the City and is an improvement over the King County franchise previously in place. Key terms of the proposed franchise include:

- 15 year term
- Clarification of obligation related to operating in the Right-of-Way:
 - ⇒ Relocation of facilities to accommodate public projects
 - ⇒ Cooperation on joint trenching
 - ⇒ Map information related to infrastructure development
 - ⇒ Restoration of the Right-of-Way after PSE work
 - ⇒ Blanket permit activities and other permitting issues
- Bonding, indemnification, and insurance requirements

The Washington Utilities and Transportation Commission (WUTC) regulates both PSE's natural gas and electrical services. The proposed franchise only applies to natural gas services. The parties expended significant time and effort clarifying the terms of the proposed franchise in order to reduce the potential that Shoreline may attempt to regulate issues already regulated by the WUTC.

Areas of Dispute

The parties were not able to agree on appropriate terms related to indemnification and insurance. The City's risk manager working with the Washington Cities Insurance Authority (WCIA) and the City Attorney play significant roles in dictating these terms. The purpose of these provisions is to protect the City from liability for operations that the City does not control. Staff seeks consistency in these provisions across franchise agreements, but a number of factors actually result in an unusual level of verity.

Insurance

Ensuring that users of the City's right-of-way have adequate insurance coverage has a number of benefits. Primarily insurance provides a secure resource to satisfy liability for damages to claimants that may include Shoreline residents or even the City itself. Additionally, the entity's ability to obtain insurance or provide self-insurance provides a measure of confidence in both that entity's financial health and operational record. This provision has become increasingly important as new providers, who may have both limited assets and operational history, seek access to the right-of-way.

Developing consistent insurance requirements across the various kinds of right-of-way users is both difficult and not recommended. It is not recommended due to the varying risk provided by the various uses of the right-of-way. The risk of injury or damage from the operation of either an electrical or natural gas system, for example, is much different then the risk of injury or damage from the operation of a Cable TV or other telecommunications system. Further, service providers choose for business reasons a large variety of mechanisms to provide this insurance resource including, for example, commercial insurance, self-insurance, or some combination of the two.

PSE illustrates this variability by having both, what the City's risk manager believes is, a higher risk activity and an unusual combination of self-insurance and commercial insurance. PSE holds "claims made" commercial insurance that provides coverage for claims based not upon the date of the incident, like most insurance policies, but on the date of claim instead. Additionally, PSE self-insures for the first several million dollars worth of liability. This is analogous to having a very large deductible. Insurance coverage for contractors hired by PSE was also an important issue. These issues have resulted in language that differs significantly from that used in other Shoreline franchises. The only remaining controversy is the amount of general umbrella liability coverage that should be required. WCIA is recommending that the City require \$50 million in total coverage. This is higher then provided by other industries in the right-of-way and is higher than required by past and current natural gas franchises in the region. WCIA still feels that this level is justified based upon recent incidents in related industries, increasing jury awards, and the fact that this is a 15 year agreement. PSE has offered to provide \$5 million.

Indemnification

The language in this provision varies greatly across franchise agreement, but staff works to keep the effect of that language stable. The language varies for the simple reason that attorneys find this provision an excellent opportunity to add value and the diversity of ways to say the same thing is vast. Generally, however, the intent and purpose of indemnification provisions is to shield the City from increased liability, risk of liability, or duty to defend against liability due to the decision to allow the franchised entity to use the right-of-way.

PSE has requested language that would require the City to defend any action against both the City and PSE and to prove PSE's negligence in order for the indemnification to become effective. In addition, that indemnification would only be effected to the extent of PSE's proven negligence. Accepting this language would make the City responsible to respond to all actions that arise from PSE's actions in the right-of-way if the City is named at all significantly increasing the City's risk of liability and defense costs.

Staff recommends the opposite indemnification priority, i.e. that PSE indemnify Shoreline for all claims arising from their use of the right-of-way and that the City indemnify PSE if damages are proven to be due to the City's sole negligence. The proposed franchise ordinance is written consistent with this recommendation.

Alternatives

Staff recommends that Council adopt the proposed franchise ordinance. This ordinance would be published in full and effective 5 days after publication. Consistent with City practice, PSE would have 60 days to accept the offered franchise or it would lapse. If it should lapse or should Council decide not to adopt the proposed ordinance, then PSE would still be eligible for Right-of-way Site Permits consistent with the regulatory changes made by Council last fall. These Right-of-way Site Permits would contain the insurance and indemnification provisions included in the proposed franchise, thus protecting the City's interests on a permit by permit basis.

The Right-of-way Site Permit alternative would be more administratively cumbersome for both PSE and the City. It would also fail to provide the consistency and stability provided by the franchise in other areas. It would, however, continue to protect the City from significant liability should PSE refuse the offered franchise.

RECOMMENDATION

This item is for discussion purposes only. With Council concurrence, staff will schedule the proposed ordinance for adoption on July 23, 2001.

ATTACHMENTS

Attachment A – Proposed Ordinance No. 280 Granting Puget Sound Energy, Inc., A Non-Exclusive Franchise To Operate A Natural Gas Distribution System In The City Of Shoreline

ORDINANCE NO. 280

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, GRANTING PUGET SOUND ENERGY, INC., A WASHINGTON CORPORATION, A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A NATURAL GAS DISTRIBUTION SYSTEM, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW PUBLIC RIGHTS-OF-WAY OF THE CITY OF SHORELINE, WASHINGTON.

WHEREAS, RCW 35A.11.020 grants the City broad authority to regulate the use of the public right-of-way; and

WHEREAS, RCW 35A.47.040 authorizes the City "to grant nonexclusive franchises for the use of public streets, bridges or other public ways, structures or places above or below the surface of the ground for ... poles, conduits, tunnels, towers and structures, pipes and wires and appurtenances thereof for transmission and distribution of...gas..."; and

WHEREAS, the Council finds that it is in the best interests of the health, safety and welfare of residents of the Shoreline community to grant a non-exclusive franchise to Puget Sound Energy for the operation of a natural gas distribution system within the City right-of-way; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

1. **Definitions.** The following terms contained herein, unless otherwise indicated, shall be defined as follows:
 - 1.1. **City:** The City of Shoreline, a municipal corporation of the State of Washington, specifically including all areas incorporated therein as of the effective date of this Ordinance and any other areas later added thereto by annexation or other means.
 - 1.2. **City Manager:** The City Manager of the City of Shoreline or designee.
 - 1.3. **Days:** Calendar days.
 - 1.4. **Facilities:** All gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, valves, meters, meter-reading devices; and all other equipment, appliances, attachments, and appurtenances utilized by PSE in the operation of activities authorized by this Ordinance. The abandonment by PSE of any Facilities as defined herein shall not act to remove the same from this definition.
 - 1.5. **PSE:** Means Puget Sound Energy, Inc. a Washington corporation, and its successors and assigns.
 - 1.6. **Permittee:** A person who has been granted a permit by the Permitting Authority, and PSE operating under Section 5.8 Blanket Permit of this agreement.

- 1.7. **Permitting Authority:** The head of the City department authorized to process and grant permits required to perform work in the City's Right-of-way, or the head of any agency authorized to perform this function on the City's behalf. Unless otherwise indicated, all references to Permitting Authority shall include the designee of the department or agency head.
- 1.8. **Person:** An entity or natural person.
- 1.9. **Right-of-way:** As used herein shall refer to the surface of and the space along, above, and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway, drive, utility easement, and/or road right-of-way now or hereafter held or administered by the City of Shoreline.

2. Franchise Granted.

- 2.1. Pursuant to RCW 35A.47.040, the City hereby grants to PSE, its heirs, successors, and assigns, subject to the terms and conditions hereinafter set forth, a franchise beginning on the effective date of this Ordinance ("Franchise").
 - 2.2. This Franchise shall grant PSE the right, privilege and authority, subject to the terms and conditions hereinafter set forth, to install, construct, operate, maintain, repair, replace, and use Facilities for a natural gas distribution system, in, under, on, across, over, through, along or below the Right-of-way, as approved under City permits issued by the Permitting Authority pursuant to this Franchise and City ordinances.
 - 2.3. This Franchise specifically does not authorize PSE to place facilities or to otherwise utilize Facilities in the Right-of-way to provide telecommunications, cable television, point-to-point data communications, or similar services either via wire or wireless technologies regardless of whether these services are provided to any person outside PSE's organization. This Section does not restrict PSE's ability to utilize telemetric devices to monitor and operate its natural gas distribution system or to monitor and control the usage of natural gas.
 - 2.4. This Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below or across any Right-of-way. Such Franchise shall in no way prevent or prohibit the City from using any Right-of-way or other City property or affect its jurisdiction over them or any part of them, and the City shall retain the authority to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of new Right-of-way or other public properties of every type and description.
3. **Franchise Term.** The term of the Franchise granted hereunder shall be for the period of fifteen (15) years counted from the last day of the calendar month in which this Ordinance becomes effective.

4. City Ordinances and Regulations.

- 4.1. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating PSE's exercise of its rights under this Franchise. PSE shall promptly conform with all such regulations, unless compliance would cause PSE to violate requirements of state or federal law.

5. Right-of-Way Management.

- 5.1. PSE's Facilities shall be maintained within the Right-of-way and PSE's activities shall be undertaken in such a manner, so as not to unreasonably interfere with the free and safe passage of traffic and unobstructed use of adjoining property in accordance with City standards and regulations.

5.2. Excavation And Notice Of Entry.

- 5.2.1. PSE shall at all times post and maintain proper barricades and comply with all applicable safety regulations during any period of construction or maintenance activities within the Right-of-way as required by City or state regulations, including RCW 39.04.180, for the construction of trench safety systems.
- 5.2.2. Whenever PSE excavates in the Right-of-way for the purpose of installation, construction, repair, maintenance or relocation of its Facilities, it shall apply to the City for a permit to do so in accordance with the ordinances and regulations of the City requiring permits to operate in the Right-of-way. In no case shall any such work commence within any Right-of-way without a permit, except as otherwise provided in this Ordinance. PSE shall provide the City with plans, maps, and information showing the proposed and final location of any Facilities in accordance with Section 5.12 of this Franchise.
- 5.2.3. At least ten (10) days prior to its intended construction of Facilities, except those activities exempted from permit requirements in accordance with Sections 5.7 & 5.8 or activities that will impact the use of the adjacent property for less than a four (4) hour period. PSE shall inform all residents in the immediately affected area, that a construction project will commence, the dates and nature of the project, and provide a toll-free or local number which the resident may call for further information. A pre-printed door hanger may be used for this purpose.
- 5.2.4. PSE shall make a good faith effort to comply with the property owner/resident's preferences, if any, regarding the location or placement of Facilities that extend above ground level consistent with sound engineering practices, City regulations, and state law.
- 5.2.5. At least twenty-four (24) hours prior to entering Right-of-way adjacent to or on private property to perform the installation, maintenance, repair, reconstruction, or removal of facilities, except those activities exempted from permit requirements in accordance with Sections 5.7 & 5.8 or activities that will impact the use of the adjacent property for less than a four (4) hour period, a written notice describing the nature and location of the work to be performed shall be physically posted upon the affected private property by PSE.

- 5.3. Abandonment of PSE's Facilities. PSE shall not abandon in place any of its Facilities within the Right-of-way without the prior written consent of the City Manager. Absent consent to abandon in place, abandoned Facilities shall be removed from the Right-of-way within 180 days of the discontinuation of their active utilization, or in accordance with a written removal plan authorized by the City Manager. All necessary permits must be obtained prior to such work.
- 5.4. Restoration after Construction.
- 5.4.1. PSE shall, after any installation, construction, relocation, maintenance, or repair of Facilities within the Right-of-way, promptly restore the Right-of-way to at least the condition the same was in immediately prior to any such installation, construction, relocation, maintenance or repair in accordance with City standards at its sole cost and expense. All concrete encased monuments, which have been disturbed or displaced by such work, shall be restored pursuant to all federal, state and local standards and specifications.
- 5.4.2. If it is determined that PSE has failed to restore the Right-of-way in accordance with Section 5.4, the City shall provide PSE with written notice including a description of actions the City believes necessary to restore the Right-of-way. If the Right-of-way is not restored in accordance with the City's notice within thirty (30) days of that notice, the City, or its authorized agent, may restore the Right-of-way. PSE shall be responsible for all costs and expenses incurred by the City in restoring the Right-of-way in accordance with this Section. The remedy granted to the City under this Section shall be in addition to those otherwise provided by this Franchise.
- 5.5. Bonding Requirement: Before undertaking any of the work authorized by this Franchise, PSE shall furnish a bond executed by PSE and a corporate surety authorized to do a surety business in the State of Washington, in a sum to be set and approved by the City Manager as reasonably sufficient to ensure performance of PSE's obligations under this Franchise. The bond shall be conditioned so that PSE shall observe all the covenants, terms and conditions and faithfully perform all of the obligations of this Franchise, and to restore or replace any defective work or materials discovered in the restoration of the Right-of-way discovered within a period of two years from the final City inspection date of any such restoration. PSE may meet the obligations of this Section with one or more bonds acceptable to the City. In the event that a bond issued pursuant to this Section is canceled by the surety, after proper notice and pursuant to the terms of said bond, PSE shall, prior to the expiration of said bond, procure a replacement bond which complies with the terms of this Section.
- 5.6. Recourse Against Bond: With respect to undertaking any of the work authorized by this Franchise, in the event PSE fails to perform its obligations in accordance with the terms and conditions of this Franchise and further fails to cure its deficiency within a reasonable period of time after receipt of written notice of such deficiency by the City, then the City may use any bond(s) furnished by PSE pursuant to Section 5.5 to cure such deficiency.

- 5.6.1. In the event the City makes use of such bond(s) furnished by PSE pursuant to Section 5.6, the City shall promptly provide written notice of same to PSE. Within thirty (30) days of receipt of such notice, PSE shall replenish or replace such bond(s) pursuant to Section 5.5.
- 5.6.2. The rights reserved to the City by this Section 5.6 are in addition to all other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding, or exercise of a right under this Section 5.6 shall constitute an election or waiver of any rights or other remedies the City may have.
- 5.7. Emergency Work, Permit Waiver. In the event of any emergency where any Facilities located in the Right-of-way are broken or damaged, or if PSE's construction area within the Right-of-way is in such a condition as to place the health or safety of any person or property in imminent danger, PSE shall immediately take any necessary emergency measures to repair or remove its Facilities or otherwise make its construction area safe without first applying for and obtaining a permit as required by this Franchise. However, this emergency provision shall not relieve PSE from later obtaining any necessary permits for the emergency work. PSE shall apply for the required permits the next business day following the emergency work or, in the case of an extended state of emergency, as soon thereafter as practical.
- 5.8. Blanket Permit. PSE shall be authorized to perform Minor Activities without a City permit of any kind and Blanket Activities under the terms and conditions of this Section 5.8 provided that the terms "Minor Activities" and "Blanket Activities" are defined in a specifically negotiated Blanket Permit Definitions, a copy of which shall be filed with the City Clerk and identified by Clerk's Receiving Number _____. All other activities will require a separate permit in accord with City ordinances.
- 5.8.1. The Permittee shall pay the City a permit inspection/processing fee in the amount set out in Blanket Permit Definitions.
- 5.8.2. The Permittee shall provide a quarterly list of permit activity by the 10th of the months of April, July, October, and January listing the previous quarter's activity authorized under this Section.
- 5.8.3. The Permittee shall provide payment of inspection fees for the quarterly activity on a quarterly basis in accordance with Section 5.8. No statements will be provided by the City.
- 5.8.4. For each separate use of the Right-of-way under this Section, and prior to commencing any work on the Right-of-way under this Section, the Permittee shall:
- 5.8.4.1. Fax or otherwise deliver to the Permitting Authority, at least twenty-four (24) hours in advance of entering the Right-of-way, a City Inspection Request Form, as provided by the Permitting Authority, which shall include at a minimum the following information: Franchise number, street address nearest to the proposed work site, and description of work to be performed.

- 5.8.4.2. Fax or deliver to the Permitting Authority a notice of completion in the form provided by the Permitting Authority within twenty-four (24) hours after completing work.
- 5.8.5. In the event the Permittee fails to comply with any of the conditions set forth in Section 5.8, the City is authorized to suspend or terminate the Permittee's authority to operate under this Section by providing Permittee written notice of such suspension or termination and the basis therefore.
- 5.8.6. The City reserves the right to alter the terms and conditions of Section 5.8 and the terms and conditions of the Blanket Permit Definitions by providing thirty (30) days written notice to the Permittee. Any change made pursuant to this Paragraph, including any change in the permit inspection/processing fee stated in Blanket Permit Definitions, shall thereafter apply to all subsequent work performed pursuant to this Section 5.8. Further, the City may terminate the Permittee's authority to work in the Right-of-way under a Blanket Permit as provided by the terms of this Section at any time without cause by providing thirty (30) days written notice to the Permittee. Any such modification or termination shall not affect the remaining terms and conditions of this Franchise or impair the rights and obligations of the Parties under those remaining terms and conditions.
- 5.9. Safety.
- 5.9.1. PSE shall exercise the rights granted in this Franchise in accordance with applicable safety rules and regulations.
- 5.10. Dangerous Conditions, Authority for City to Abate.
- 5.10.1. In the event that PSE's Facilities or operations cause or contribute to a condition that appears to endanger any person or substantially impair the lateral support of the adjoining Right-of-way, public or private property, the City Manager may direct PSE, at no charge or expense to the City, to take actions to resolve the condition or remove the endangerment. Such directive may include compliance within a prescribed time period.
- 5.10.2. In the event PSE fails to promptly take action as directed by the City, or fails to fully comply with such direction, or if emergency conditions exist which require immediate action to prevent imminent injury or damages to persons or property, the City may take such actions as it believes are necessary to protect persons or property and PSE shall be responsible to reimburse the City for its costs. The City's authority to act upon PSE's Facilities hereunder is specifically limited to actions, taken by trained emergency response personnel, to stop the flow of natural gas actively contributing to a dangerous condition in the face of PSE's failure to timely respond to the City's request for such action.

5.11. Relocation of Facilities.

5.11.1. PSE agrees to protect, support, temporarily disconnect, relocate or remove from the Right-of-way its Facilities without cost to the City, when so required by the City to facilitate the completion of or as a result of a public project, provided that PSE shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the Right-of-way and upon approval by the City, any Facilities required to be temporarily disconnected or removed. As used in this Section, the term "public project" is a project included in any future City adopted six-year Capital Improvement Program and consistent with the City's Comprehensive Plan as currently adopted or hereinafter amended.

5.11.2. If the City determines that a Public Project necessitates the relocation of PSE's existing Facilities, the City shall:

5.11.2.1. As soon as possible, but not less than sixty (60) days prior to the commencement of such Public Project, provide PSE with written notice requiring such relocation; and

5.11.2.2. Provide PSE with copies of any plans and specifications pertinent to the requested relocation and a proposed temporary or permanent relocation for PSE's Facilities.

5.11.2.3. After receipt of such notice and such plans and specifications, PSE shall complete relocation of its Facilities at no charge or expense to the City at least ten (10) days prior to commencement of the Public Project or at such later time as mutually agreed by the City and PSE.

5.11.3. PSE may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise PSE in writing if any of the alternatives are suitable to accommodate the Public Project. If so requested by the City, PSE shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by PSE full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, PSE shall relocate its Facilities as provided in this Section.

5.11.4. If the City requires the subsequent relocation of Facilities within five (5) years from the date of relocation of such Facilities pursuant to this Section, then the City shall bear the entire cost of such subsequent relocation.

5.11.5. If the City vacates any Right-of-way with PSE Facilities, the City shall reserve an easement in its vacation ordinance adequate for the repair, maintenance and replacement of the Facilities and sited along the location of the Facilities, provided that no easement shall be reserved if the vacation is for a Public Project and the Facilities are to be relocated under this Section 5.11. No easement shall be reserved if the vacation is conditioned upon a vacation petitioner's payment for the cost of relocating existing Facilities to another Right-of-way or private easement including necessary service reconnections caused by the relocation.

- 5.11.6. The provisions of this Section 5.11 shall in no manner preclude or restrict PSE from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person other than the City, where the improvements to be constructed by said person are not part of a Public Project, provided that such arrangements do not unduly delay or increase the cost of a related Public Project.
- 5.12. PSE's Maps and Records. PSE agrees to provide the City, without charge, with as-built plans, maps, and records, in its possession or generated in the future as a part of its standard operations, that show the vertical and horizontal location of its Facilities within the Right-of-way using a minimum scale of one inch equals one hundred feet (1"=100') or such other scale mutually agreed to by PSE and the City. If available, maps shall be provided in Geographical Information System (GIS) or other digital electronic format used by the City and, upon request, in hard copy plan form used by PSE. This information shall be provided within one hundred eighty (180) days of the effective date of this Franchise and shall be updated upon reasonable request by the City.
- 5.13. Utility Location. Nothing herein is intended (nor shall be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining the location of utility facilities.
- 5.14. Underground Installation. PSE hereby affirms its understanding and agreement that its activities within the City must comply with Shoreline Municipal Code ("SMC") 13.20, which establishes minimum requirements and procedures for the underground installation of electric and communication facilities, to the extent it applies to PSE's activities under this Franchise. Consistent with that regulation, PSE shall install its Facilities underground. Provided, however, that PSE may install wireless system monitoring equipment solely for its own use in providing the services authorized hereunder and other Facilities that must be installed above ground in order to function properly. PSE will also share information and otherwise cooperate with the City and other utility providers to serve the objectives of SMC 13.20.
6. Planning Coordination.
- 6.1. Growth Management. PSE agrees, as follows, to participate in the development of, and reasonable updates to, the utilities element of the City's comprehensive plan:
- 6.1.1. PSE will participate in a cooperative effort with the City to ensure that the Utilities Element of Shoreline's Comprehensive plan is accurate as it relates to PSE's operations and is updated to ensure its continued relevance at reasonable intervals.
- 6.1.2. PSE shall submit information related to the general location, proposed location, and capacity of existing and proposed Facilities as requested by the City Manager within a reasonable time, not exceeding sixty (60) days from receipt of a written request for such information.
- 6.2. System Development Information. PSE will assign a representative whose responsibility shall be to coordinate with the City on planning for City Capital

Improvement Program projects. At a minimum, such coordination shall include the following:

- 6.2.1. By March 1st of each year, PSE shall provide the City Manager or his designee with a schedule of its planned capital improvements, which may affect the Right-of-way for that year;
 - 6.2.2. PSE shall meet with the City, other franchisees and users of the Right-of-way, according to a schedule to be determined by the City, to schedule and coordinate construction; and
 - 6.2.3. All construction locations, activities, and schedules shall be coordinated, as required by the City Manager or his designee, to minimize public inconvenience, disruption, or damages.
 - 6.2.4. PSE will cooperate with the City to extend its natural gas distribution system into areas of the City that do not have natural gas service available in conjunction with City road improvement projects subject to applicable PSE tariffs on file with the Washington Utilities and Transportation Commission.
- 6.3. Emergency Operations. The City and PSE agree to cooperate in the planning and implementation of emergency operations response procedures.

7. **Indemnification.**

- 7.1. PSE shall indemnify, defend, and hold the City harmless from any and all claims and demands made against it on account of injury or damage to any person or property arising in any manner from the performance of this Franchise except for loss caused by the City's sole negligence; provided, that the City retains the right to participate in any suit if a principal of governmental or public law is involved. In the event any claim or demand presented to, or suit or action is commenced against, the City based upon any such claim or demand, the City shall promptly notify PSE thereof, and PSE may elect, at its sole cost and expense, to settle and compromise such suit or action, or defend the same with attorneys of its choice.
- 7.2. Should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injuries to persons or damages to property caused by or resulting from concurrent negligence of PSE, its employees or subcontractors, and the City, its officers, officials, employees, and volunteers, PSE's liability hereunder shall be only to the extent of PSE's negligence or that of its subcontractors.
- 7.3. PSE's indemnification obligations pursuant to this agreement shall include assuming potential liability for actions brought by PSE's own employees and the employees of PSE's agents, contractors, and subcontractors even though PSE might be immune under Title 51 RCW from direct suit brought by such employees. It is expressly agreed and understood that this assumption of potential liability for actions brought by the aforementioned employees is limited solely to claims against the City arising by virtue of PSE's exercise of the rights set forth in this Franchise. The obligations of PSE under this Franchise have been mutually negotiated by the parties hereto, and

PSE acknowledges that the City would not enter into this Franchise without PSE waiver thereof. To the extent required to provide this indemnification and this indemnification only, PSE waives its immunity under Title 51 RCW as provided in RCW 4.24.115.

- 7.4. Inspection or acceptance by the City of any work performed by PSE at the time of completion of construction shall not be grounds for avoidance of PSE's indemnification obligations. Said indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised prior to the culmination of any litigation or the institution of any litigation.

8. **Insurance.**

- 8.1. PSE shall procure and maintain for the duration of the Franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to PSE, its agents or employees. A combination of self-insurance and excess liability insurance may be utilized by PSE. Prior to the commencement of any work or installation of any Facilities pursuant to this Franchise, PSE shall provide to the City a certificate of insurance and/or evidence of self insurance evidencing the following required coverages and limits:
 - 8.1.1. Automobile Liability insurance for owned, non-owned and hired vehicles with limits no less than \$4,000,000 Combined Single Limit per accident for bodily injury and property damage; and
 - 8.1.2. Commercial General Liability insurance policy and self-insurance coverage providing combined coverage of no less than \$50,000,000 combined single limit per occurrence and \$50,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under PSE's Commercial General Liability insurance policy. If coverage is provided by self-insurance or a policy of insurance written on a claims made rather than occurrence basis, PSE agrees to maintain the same levels of self-insurance or claims made policy coverage, or to purchase endorsements providing additional reporting periods in which claims otherwise covered by the claims made policy or self-insurance may be reported, for a period of three (3) years following either the discontinuance of the claims made policy or self-insurance or the termination of this Franchise, whichever is earlier.
- 8.2. Payment of deductible or self-insured retention shall be the sole responsibility of PSE.
- 8.3. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, or employees. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the

insurer's liability. PSE's insurance shall be primary. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of PSE's insurance and shall not contribute with it. Coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City.

9. **Enforcement.**

- 9.1. A substantial violation or breach of this Franchise by PSE shall include, but shall not be limited to, the following:
 - 9.1.1. An uncured violation of any material provision of this Franchise, or any material rule, order or regulation of the City made pursuant to its power to protect the public health, safety and welfare;
 - 9.1.2. An intentional evasion or knowing attempt to evade any material provision of this Franchise or practice of any fraud or deceit upon the City;
 - 9.1.3. An uncured failure to pay fees that may be associated with this Franchise, if any.
 - 9.2. In the event either party shall fail to comply with the terms of this Franchise, the other party shall provide the non-complying party with detailed written notice of any alleged violation or breach. The party who is allegedly in non-compliance shall have a period of 60 days following such written notice to cure the alleged violation or breach, demonstrate to the other's satisfaction that a violation or breach does not exist, or submit a plan satisfactory to the other to correct the violation or breach. If, at the end of said 60-day period, the City or PSE reasonably believes that a substantial violation or material breach is continuing and the party in breach is not taking satisfactory corrective action, the other may declare that the party in breach is in default, which declaration must be in writing. Within 20 days after receipt of a written declaration of default, the non-defaulting party may terminate this Franchise.
 - 9.3. The City may, in its discretion, provide an additional opportunity for PSE to remedy any violation or breach and come into compliance with this Franchise so as to avoid termination.
 - 9.4. Any violation or breach continuing to exist after the expiration of the notice and cure periods identified in Section 9.2 may be remedied by the City at PSE's expense.
10. **Force Majeure.** Neither party will be subject to penalty for any non-compliance with this Franchise or delay in compliance of any of its obligations hereunder where such compliance is prevented or delayed by acts of God (except normal weather conditions for the Shoreline-Seattle area), fire, explosion, accident, flood, epidemic, war, riot, rebellion, interruption or rationing of fuel supply, or other unexpected and uncontrollable event ("force majeure events"). If a force majeure event occurs, this Section will only apply if the Party intending to seek the protections of this Section notifies the other Party in writing. The City may continue to exercise its rights to abate any Dangerous Condition consistent with Section 5.10.
11. **Survival.** All of the provisions, conditions and requirements of Sections 5.3 Abandonment Of PSE's Facilities, 5.4 Restoration After Construction, 5.10 Dangerous Conditions, Authority For City To Abate, 7. Indemnification, 8. Insurance, and other sections of this

Franchise that may be reasonably construed to survive the termination or expiration of this Franchise shall survive such termination or expiration. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the parties hereto and all privileges, as well as all obligations and liabilities of each party shall inure to their respective heirs, successors and assigns.

12. **Severability.** If any Section, sentence, clause or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other Section, sentence, clause or phrase of this Franchise. The Parties may amend, repeal, add, replace, or modify any provision of this Franchise to preserve the intent of the parties as expressed herein prior to any finding of invalidity or unconstitutionality.
13. **Assignment.** This Franchise shall not be sold, transferred, assigned, or disposed of in whole or in part either by sale, voluntary or involuntary merger, consolidation or otherwise, without the written approval of the City, which shall not be unreasonably withheld. The City may recover from PSE any actual administrative expenses incurred by the City during its review of any transfer proposed by PSE.
 - 13.1. An assignment of this Franchise shall be deemed to occur if there is an actual change in control or where ownership of fifty percent (50%) or more of the beneficial interests, singly or collectively, are obtained by other parties. The word "control" as used herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.
 - 13.2. Except as otherwise provided herein, PSE shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of PSE. Every change, transfer, or acquisition of control of PSE shall cause a review of the proposed transfer. In the event that the City denies its consent and such change, transfer or acquisition of control has been effected, the Franchise is terminated.
 - 13.3. PSE shall be permitted, without the City's approval, to mortgage its rights, privileges and authority in and under this Franchise to the trustee under its mortgage indenture for the benefit of its bondholders.
14. **Notice.** Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

Puget Sound Energy	City Manager
P.O. Box 90868	City of Shoreline
Bellevue, WA 98009-0868	17544 Midvale Avenue N.
Attn: Municipal & Land Planning	Shoreline, WA 98133-4921
15. **Non-Waiver.** The failure of either party to enforce any breach or violation by the other party of any provision of this Franchise shall not be deemed to be a waiver or a continuing waiver by the non-breaching party of any subsequent breach or violation of the same or any other provision of this Franchise.

16. **Alternate Dispute Resolution.** If the parties are unable to resolve disputes arising from the terms of this Franchise, prior to resorting to a court of competent jurisdiction, the parties shall submit the dispute to a non-binding alternate dispute resolution process agreed to by the parties. Unless otherwise agreed between the parties or determined herein, the cost of that process shall be shared equally.
17. **Entire Agreement.** Except for the Blanket Permit Definitions to be prepared in accordance with this Section 5.8, this Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution and acceptance hereof.
18. **Amendment.** Except for the Blanket Permit Definitions to be prepared in accordance with this Section 5.8, this Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington.
19. **Supremacy.** This Franchise represents the dominant agreement between the parties. In the event of any conflict between this Franchise and any City ordinance or permit, the terms of this Franchise shall control. In the event, however, of any conflict between the provisions of this Franchise and PSE's applicable tariff on file with the Washington Utilities and Transportation Commission or a successor state regulatory authority, the tariff shall control for the duration of that conflict, provided, that PSE shall provide 60 (sixty) days notice of any proposed tariff or amended tariff which would create a conflict with this Franchise.
20. **Directions to City Clerk.** The City Clerk is hereby authorized and directed to forward certified copies of this Ordinance to PSE. PSE shall have sixty (60) days from receipt of the certified copy of this Ordinance to accept in writing the terms of the Franchise granted to PSE in this Ordinance.
21. **Publication Costs.** In accord with state law, this Ordinance shall be published in full. The costs of said publication shall be borne by PSE.

22. **Effective Date.** This Ordinance shall take effect and be in full force on the first day of the first full month at least five days following the publication of this Ordinance.

PASSED BY THE CITY COUNCIL ON _____, 2001.

Mayor Scott Jepsen

ATTEST:

Sharon Mattioli, CMC
City Clerk

APPROVED AS TO FORM:

Ian Sievers
City Attorney

Date of Publication: , 2001

Effective Date: , 2001