

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Adoption of Ordinance No. 309 to Amend the Development Code to address State Requirements for Siting Secure Community Transition Facilities

DEPARTMENT: Planning and Development Services

PRESENTED BY: Tim Stewart, Director of Planning and Development Services;
Rachael Markle, Planning Manager

PROBLEM/ISSUE STATEMENT:

Local governments are required by the Growth Management Act (GMA) to adopt policies and regulations that address the identification and siting of Essential Public Facilities (EPF). One of these, Secure Community Transitional Facilities (SCTFs) will be used to house convicted sex offenders that have served their criminal sentence, but are civilly committed and conditionally released. If local governments do not adopt regulations to locate these facilities by September 1, 2000, the State has the opportunity to preempt local regulations and site SCTFs using the state's criteria by October 1, 2002.

ALTERNATIVES ANALYZED:

Staff has analyzed the following options:

- Do Nothing
- Amend the Essential Public Facilities Elements of the Comprehensive Plan and Development Code
- Amend the Development Code
 - a. Planning Commission Recommendation: Ordinance No. 309 – Planning Commission and City Council as the review and decision making authority; or
 - b. Staff Recommendation: Alternative Ordinance No. 309 – Hearing Examiner as the review and decision making authority.

RECOMMENDATION

The Planning Commission recommends adopting Ordinance 309 (Attachment A) in response to the State's mandate to establish a process for identifying and siting SCTFs in the Comprehensive Plan and Development Code. Staff supports the Planning Commission's recommendation, with the exception of giving the Hearing Examiner the review and decision making authority instead of the Planning Commission and City Council. Attachment B is the staff recommended alternative Ordinance No. 309.

Approved by:

City Manager 

City Attorney 

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BACKGROUND

The Council and Planning Commission were briefed on this topic at the June 10th Council Dinner Meeting. The Growth Management Act (GMA) mandates that jurisdictions include a policy in their local Comprehensive Plans about the siting of Essential Public Facilities (EPFs). The GMA defines an EPF as:

...[T]hose facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transitional facilities as defined in RCW 71.09.020.

Note: RCW 71.09.250-340 & ESSB 6594 which, amended 71.09, are available at www.mrsc.org or from the Planning Department

The State, under a Federal court order, was forced to create a less restrictive housing alternative than total confinement for convicted sex offenders who have served their criminal sentence but are civilly committed and conditionally released. Civil commitment is a process by which a sex offender who has served their sentence but are found by state superior court to meet the definition of sexually violent predator can be committed to a secure facility instead of being released into society. In 2001 the State adopted legislation that added specific requirements for policies and regulations to establish "Secure Community Transition Facilities" (SCTFs) as the less restrictive housing alternative. Although the deadline for updating the Comprehensive Plan was recently extended by the State Legislature until December 1, 2004, the deadline for establishing a process to site SCTFs, including amendments to the Development Code remains September 1, 2002. A SCTF is defined in the RCW as:

...[A] residential facility for persons civilly committed and conditionally released to a less restrictive alternative under this chapter. A SCTF has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facilities established pursuant to RCW 71.09.250 and any community-based facilities established under this chapter and operated by the secretary or under contract with the [DSHS] secretary.

The legislature made findings in RCW 71.09.010 regarding those persons that will be civilly committed and conditionally released to Secure Community Treatment Facilities:

The legislature finds that a small but extremely dangerous group of sexually violent predators exist who do not have mental disease or defect that render them appropriate for the existing involuntary treatment act...In contrast to persons appropriate for civil commitment ...sexually violent predators generally have personality disorders and/or mental abnormalities and those conditions render them likely to engage in sexually violent behavior. The legislature further finds that sex offenders' likelihood of engaging in repeat acts of predatory sexual violence is high...The legislature further finds that the prognosis for curing sexually violent offenders is poor, the treatment needs of this population are very long term, and the treatment modalities for this population are very different than the rational treatment modalities for people appropriate for commitment under the involuntary treatment act.

Further, RCW 71.09.020 defines predatory as, "acts directed towards: (a) strangers; (b) individuals with whom a relationship has been established or promoted for the primary

purpose of victimization; or (c) persons of casual acquaintance with whom no substantial personal relationship exists”.

RCW 71.09 states that there must be an equitable distribution of SCTFs throughout the state. McNeil Island in Pierce County contains the total confinement Special Commitment Center, which currently houses approximately 150 civilly committed sexual offenders. The State, in an effort to achieve equitable distribution, adopted legislation that states that no additional SCTFs may be required to be sited in Pierce County before July 1, 2008, and to the greatest extent possible, persons who were not residents of Pierce County must not be further released to Pierce County until after June 30, 2003. An estimated 15 SCTF beds will be required to be sited in King County between 2004 and 2007 based on the number of sexual offenders that were committed by King County that may be eligible for civil commitment and conditional release. The State’s mandate to equitably site SCTFs also includes weighing such factors as:

- The number and location of existing residential facilities operated by the Department of Corrections and the Department of Health and Human Services (DSHS) Mental Health Division in each jurisdiction in the county; and
- The number of registered sex offenders classified as level II or level III and the number of sex offenders registered as homeless residing in each jurisdiction in the county.

The State’s mandated minimum siting criteria such as the following for SCTFs:

- DSHS must approve any site selected.
- Local plans and regulations may not preclude SCTF siting.
- The minimum size for any SCTF is three beds.
- Public safety minimum requirements will not permit the location of an SCTF adjacent to, immediately across a street or parking lot, or within the line of sight of a risk potential activity or facility in existence at the time a site is listed for consideration.

Risk potential activities include:

- Public and private schools
- School bus stops
- Licensed day care and preschool facilities
- Public parks, publicly dedicated trails, and sports fields
- Recreational and community centers
- Churches, synagogues, temples, and mosques
- Public libraries
- Site security consisting of:
 - Installation of a commercial grade security panel that is tamper proof with a key lock to prevent unauthorized access
 - Availability of an emergency electrical supply with a battery back up and a generator
 - Installation of a personal panic devices for all staff
 - Monitoring and signaling of the security system by land or cell phone or a private radio network
 - Staff must at all times wear a DSHS issued photo ID badge

(Please See Attachment C: DSHS Policy Guidelines: The Siting and Operation of SCTFs)

In addition, Attachment D is a document produced by DSHS entitled “Frequently Asked Questions” that may be a useful tool in answering questions that may arise as you read this report.

ANALYSIS

City of Shoreline Policies on EPFs

The City of Shoreline Comprehensive Plan appears to be consistent with RCW 36.70A.200 and the Countywide Planning Policies. Shoreline's Comprehensive Plan:

- Defines Essential Public Facilities;
- Includes a process for identifying and siting essential public facilities; and
- Does not preclude the siting of essential public facilities.

City's Current Regulatory Treatment of SCTFs

The application of the City's current development regulations may preclude the siting of a SCTF. The Code explicitly lists and regulates some uses that would be considered Essential Public Facilities such as transfer station, transit bus base, transit park and ride, work release facility, fire facilities, and police facilities. SCTFs are not listed and are therefore an Unlisted use. Those uses that are not explicitly listed in the Code are not permitted unless allowed through a Code interpretation applying the criteria for an unlisted use. Decisions regarding whether an Unlisted Use will or will not be permitted are made administratively by the Director. The criteria on which an unlisted use is determined is as follows:

1. The physical characteristics of the unlisted use and its supporting structures, including but not limited to scale, traffic, hours of operation, and other impacts; and
2. Whether the unlisted use complements or is compatible in intensity and appearance with the other uses permitted in the zone in which it is to be located.

Therefore, currently a SCTF is precluded unless it meets the unlisted use criteria.

In addition to reviewing the City's policies and regulations, staff reviewed and analyzed the following sources of information:

- Applicable State and Federal legislation
- Documents and training provided by the Department of Social and Health Services (DSHS) to assist local governments in complying with the GMA mandate
- Applicable court cases
- Applicable King County, Snohomish County, Bellevue, Redmond, Seattle, SeaTac, Woodinville, Edgewood, Lake Forest Park, Burien, Bothell and Lakewood policies and regulations

OPTIONS ANALYZED

Status Quo – Do Nothing

If DSHS decides to site a SCTF in Shoreline, the Comprehensive Plan policies do not preclude it, which is consistent with GMA. The SCTF use is not listed in Shoreline's Development Code and is therefore prohibited. The applicant for the SCTF use could apply for a Code Interpretation for an Unlisted Use. The use, in this case the SCTF would have to satisfy the Unlisted Use criteria to be permitted. The Director of Planning and Development Services is the decision-maker for this type of permit.

Risks of Option: If the Director determines that the use does not meet the criteria, the State could preempt the City's development regulations and site the facility using its own criteria. In addition to losing "home rule", the City's development regulations could be found to be out of compliance with its Comprehensive Plan and state law resulting in Growth Management Hearings Board action.

Amend the Comprehensive Plan and Development Code
Comprehensive Plan

Staff finds the Comprehensive Plan chapter on Essential Public Facilities to be generally consistent with the GMA. Due to the September 1, 2002 deadline for response to this issue, staff recommends leaving the Comprehensive Plan as is and focusing on amendments to the Development Code.

Amend the Development Code

The Development Code, while not explicitly precluding the siting of Essential Public Facilities including Secure Community Transitional Facilities, currently leaves the allowance of the use in any zone to the discretion of the Director using generic criteria without public review. At the June 10, 2002 Joint Council and Planning Commission Dinner Meeting, staff was given the direction to proceed with the development of amendments to the Development Code to regulate Secure Community Treatment Facilities.

PUBLIC COMMENT

A State Environmental Policy Act (SEPA) Determination of Nonsignificance (DNS) was issued on June 25, 2002. The comment period was from June 25, 2002 to July 10, 2002. There have been no comments received on the SEPA DNS. Two letters of comment were submitted to the City on the proposed amendments. Please see Attachment E: Comment Letters.

SUMMARY OF PUBLIC COMMENT

Comment Source	Comment
Mr. Rob Garwood, City of Bothell	<ol style="list-style-type: none"> 1. Add DSHS definition for "line of sight". 2. Add "line of sight" and within 600 feet instead of "within 200 feet" of a risk potential activity or risk potential facility. 3. Add definition of risk potential activity and facility. 4. Expand noticing requirements to mail to residents and owners of property within .5 miles of proposed site.
Ms. Beverly Wilson, DSHS	Responded to the City's draft Ordinance No. 309 for compliance with State law

The Planning Commission conducted a public hearing on the proposed amendments on July 18, 2002. The following persons testified:

- Ms. Beverly Wilson, Associate Superintendent for Community Programs at the Special Commitment Center for the Department of Social and Health Services (DSHS): Ms. Wilson reviewed the City's draft ordinance for compliance with the state law. She identified areas in which the City's draft ordinance is more restrictive than the State's criteria for siting SCTFs. She also was able to answer several questions concerning the background and implementation of the recent SCTF legislation.
- Mr. Rob Garwood, Shoreline resident and Senior Planner for City of Bothell: Mr. Garwood shared information on how the City of Bothell was approaching the siting and regulation of SCTFs. He also suggested the Commissioners contact the State legislature to convey displeasure at having to site these facilities.

Please see Attachment F: Planning Commission Minutes 7/18/02 for a more detailed description of the testimony provided.

DETAILED DESCRIPTION OF PROPOSED AMENDMENTS

The purpose of the following discussion is to provide context for each of the proposed amendments. (Note: The proposed amendment language is underlined.)

1. **Amendment to 20.20.044:** Staff and the Planning Commission supported public comment to add a definition for “Risk Potential Activities and Facilities” to the Code to add clarity to the proposed regulations. The proposed definition is as follows:

Risk potential activity or risk potential facility In accordance with RCW 71.09.020, means an activity or facility that provides a higher incidence of risk to the public from persons conditionally released from the special commitment center. Risk potential activities and facilities include: public and private schools, school bus stops, licensed day care and licensed preschool facilities, public parks, publicly dedicated trails, sports fields, playgrounds, recreational and community centers, churches, synagogues, temples, mosques, public libraries, and other activities and facilities identified by the State Department of Social and Health Services following the hearings on a potential site required in RCW 71.09.315. School Bus stops do not include bus stops primarily used for public transit.

2. **Amendment to 20.20.046:** For the purposes of identifying Secure Community Transitional Facilities, staff recommends adding a definition for SCTFs to the Code. The proposed definition is the same definition used by the State:

Secure Community Transitional Facility (SCTF) A residential facility for persons civilly committed and conditionally released to a less restrictive community based - alternative under RCW 71.09 operated by or under contract with the Washington State Department of Social and Health Services. A secure community transitional facility has supervision and security, and either provides or ensures the provision of sex offender treatment services.

3. **Amendment to Table 20.30.060:** A process for reviewing applications for SCTFs should also be established. Staff considered the processes currently available in the Code and suggests the creation of a new quasi-judicial process. Due to the difficulty of siting such facilities, staff recommends considering the review and decision of these types of permits by a Hearing Examiner. The proposed process would be a SCTF-Special Use Permit: (Note: It is unusual to create a separate process for a single use, however this use is new and unique to this State).

The Planning Commission amended the staff recommendation by replacing the Hearing Examiner as the review and decision-making authority and recommends having the Planning Commission conduct the public hearing and the City Council making the final decision, the procedure applicable to special use permits generally. The Planning Commission’s recommended Ordinance No. 309 includes this provision and does not include the new permit in the Type C action table under SMC 20.30.060. Staff continues to recommend that the Hearing Examiner be the review and decision making authority for SCTF- Special Use Permits based on the Hearing Examiner’s training, skills, and ability to conduct highly sensitive quasi judicial hearings. This is the only difference between the Planning Commission’s recommended Ordinance 309 (Attachment A) and the staff alternative Ordinance(Attachment B).

review the adequacy of transportation plans for the purposes of providing assurances to the community that transport of SCTF residents will be secure.

3. In addition to meeting the noticing requirements specified in SMC 20.30.120, noticing for SCTF Special Use Permit applications also includes mailing the notice of application to both residents and owners of real property located within one half mile of the site.

Public testimony included a request to increase the noticing requirements for SCTF Special Use permits. The original proposal applied the noticing requirements used by the City for Type C permits. The above requirement increases the distance from 500 feet to one half mile and includes residents as well as property owners. Beverly Wilson, the DSHS representative present at the Public Hearing confirmed that the above noticing requirements would be consistent with the State's siting criteria. The Planning Commission and staff support this amendment to the original proposal.

4. In no case shall a SCTF be sited adjacent to, immediately across a street or parking lot from, or within 600 feet of unobstructed sight distance or 200 feet of risk potential activities or facilities as defined in this title in existence at the time a site is listed for consideration: provided, the 200 foot criteria shall not apply if the State Department of Social and Health Services determines it is not needed to protect public safety.

The distances specified in this subsection shall be measured by following a straight line from the nearest point of the building in which the SCTF is to be located, to the nearest point of the property line of the lot occupied by the risk potential activity or facility.

Based on analysis of the GIS data from the State that attempts to identify the risk potential activities and facilities in Shoreline, Staff proposed a distance of 200 feet from the risk potential activities as a means of providing a second criteria for separation where line of sight is obstructed but proximity would otherwise be known to SCTF residents, for example foot traffic in the vicinity of the SCTF generated by the potential risk facility. A public comment received from Mr. Garwood, stated that the State is defining "line of sight" as 600 feet from a risk potential activity or facility. DSHS confirmed that 600 feet is being used by the State as the distance at which an unobstructed view becomes undistinguishable. Based on this information and the Planning Commission's recommendation, within the line of sight has been added. Following legal review of comments requested by the Planning Commission, the 200 foot criteria for separation has been amended to allow override by a DSHS finding that it is unnecessary for protection of public safety on a particular site application.

5. Each SCTF shall provide on-site dining, on-site laundry or laundry service, and on-site recreation to serve the residents.

These criteria are proposed to increase assurances that the risks to the community will be minimized by limiting access of untrained service providers to and from the SCTF. DSHS stated that the above regulation is "moot" due to the fact that the state will be providing these services on site as part of its operating standards. The Planning Commission heard this testimony and did not recommend removal of this regulation. Staff concurs with the Planning Commission.

6. Applicants shall submit the following items in addition to the standard permit application:
a. The siting process used for the SCTF, including alternative locations considered.

- b. An analysis showing that utmost consideration was given to potential sites such that siting of the facility will have no undue impact on any one racial, cultural, or socioeconomic group, and that there will not be an over concentration of similar facilities in the City or a particular neighborhood.
- c. Proposed mitigation measures including the use of extensive buffering from adjoining uses.
- d. Demonstration of an approved Interlocal Agreement between DSHS and the City of Shoreline regarding security and operational procedures.
- e. A schedule and analysis of all public input solicited or to be solicited during the siting process.

The above application submittal requirements are intended to aid in determining whether the proposed site for a SCTF meets the local decision criteria that follows. The original amendment proposed to require the state to submit a detailed security plan and operating rules to the City for consideration during the review of an SCTF – Special Use Permit. The State asserts that requiring the public release of detailed security plans for the SCTFs could ultimately jeopardize security. DSHS indicates that the state at the request of the local law enforcement agency will enter into a long-term agreement to confirm security and operating procedures for the SCTF. The Planning Commission and staff acknowledge the merit in not disclosing detailed security and operating procedures to the public and recommended replacing the original requirement with the approved interlocal agreement noted above. DSHS comments that the interlocal agreement should not have to be completed prior to permitting the facility, but that a commitment to enter into an agreement should suffice. Staff and the Planning Commission did not recommend changing the requirement from an approved agreement to a commitment.

B. Decision Criteria. A Special Use Permit for a Secure Community Transitional Facility shall be granted by the City, only if the applicant demonstrates the following criteria which shall replace the Special Use criteria of SMC 20.30.330:

- 1. The Secure Community Transitional Facility will not materially endanger the health, safety and welfare of the community;
- 2. The siting of a SCTF shall not create an over concentration within the City of Shoreline, a particular neighborhood, or community of such uses as defined by RCW 71.09, work release facilities, pre release facilities or similar facilities including Level 1, 2 and 3 registered sex offender housing;
- 3. The location, size and height of buildings, structures, walls and fences, and screening vegetation for the essential public facility shall not hinder or discourage the appropriate development or use of neighboring properties; and
- 4. The essential public facility will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding areas or conditions can be established to mitigate adverse impacts.

Although criteria #1 and #2 are referenced in DSHS’s response to the City’s proposed regulations as requirements “that could be applied in a preclusive manner”, staff and the Planning Commission do not recommend removal or amendment of these requirements.

Risks Associated with Adopting the Proposed Amendments:

Staff believes the criteria proposed in the attached ordinances are not more restrictive than those minimum criteria specifically addressed in RCW 71.09.285 through 71.09.340, and the City’s siting process for SCTFs should not be preempted by the state. This obligation for consistency is set forth in RCW 71.09, which states:

The minimum requirements set out in RCW 71.09.285 through 71.09.340 are minimum requirements to be applied by the department [DSHS]. Nothing in this section is intended to prevent a city or county from adopting development regulations, as defined in RCW 36.70A.030, unless the proposed regulation imposes requirements more restrictive than those specifically addressed in RCW 71.09.285 through 71.09.340. Regulations that impose requirements more restrictive than those specifically addressed in these sections are void. Nothing in these sections prevents the department [DSHS] from adding requirements to enhance public safety.

“If the department sites a secure community transition facility in [a city or county that has consistent requirements] the department shall use the process established by the city or county for siting such facilities;” ESSB 6594 Laws of 2002, §4 (a).

RECOMMENDATION

The Planning Commission recommends adopting Ordinance 309 (Attachment A) in response to the State's mandate to establish a process for identifying and siting SCTFs in the Comprehensive Plan and Development Code. Staff supports the Planning Commission's recommendation, with the exception of giving the Hearing Examiner the review and decision making authority instead of the Planning Commission and City Council. Attachment B is the staff recommended alternative Ordinance No. 309.

ATTACHMENTS

Attachment A	Ordinance No. 309 (Planning Commission Recommendation)
Attachment B	Ordinance No. 309 (Staff Alternative)
Attachment C	DSHS Siting & Operation of SCTFs (This document has not been amended by DSHS to include amendments from ESSB 6594.)
Attachment D	Frequently Asked Questions
Attachment E	Comment Letters
Attachment F	Planning Commission Draft Minutes – July 18, 2002

**ATTACHMENT A:
ORDINANCE NO. 309
(PLANNING
COMMISSION
RECOMMENDATION)**

ORDINANCE NO. 309

AN ORDINANCE AMENDING THE DEVELOPMENT CODE CHAPTERS 20.20.046, 20.30.060, 20.40.140, AND 20.40.505 TO DEFINE AND REGULATE SECURE COMMUNITY RESIDENTIAL FACILITIES IN ACCORDANCE WITH ENGROSSED SUBSTITUTE SENATE BILL 6594

WHEREAS, the City adopted Title 20 in the Shoreline Municipal Code on June 12, 2000; and

WHEREAS, a notice of public hearing and the availability of the proposed amendments for review and public comment was published in the legal section of the Seattle Times on June 26, 2002; and

WHEREAS, a SEPA Determination of Nonsignificance (DNS) was issued on June 25, 2002 and the comment period ended on July 10, 2002; and

WHEREAS, the a copy of the proposed amendments to Title 20 were submitted to the Washington State Office of Community Development on June 26, 2002 pursuant to WAC 365-195-820;

WHEREAS, the Planning Commission conducted a public hearing on July 18, 2002 to consider public comments on the amendments proposed to Title 20 of the Shoreline Municipal Code Chapters 20.20.046, 20.30.060, 20.40.140, and 20.40.505 to define and regulate Secure Community Treatment Facilities;

WHEREAS, the Planning Commission forwarded a recommendation to City Council to adopt regulations to address the siting of Secure Community Treatment Facilities on July 18, 2002; and

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

WHEREAS, the Council is adopting the proposed amendments prior to September 1, 2002 to comply with Engrossed Substitute Senate Bill 6594 which requires local governments to adopt regulations to provide for the siting of Secure Community Transitional Facilities or be preempted by the State Department of Social and Human Services siting guidelines.

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

Section 1. Amendment. Shoreline Municipal Code 20.20.044 R Definitions is amended to add:

Risk potential activity or risk potential facility In accordance with 71.09.020, means an activity or facility that provides a higher incidence of risk to the public from persons conditionally released from the special commitment center. Risk potential activities and facilities include: public and private schools, school bus stops, licensed day care and licensed preschool facilities, public parks, publicly dedicated trails, sports fields, playgrounds, recreational and community centers, churches, synagogues, temples, mosques, public libraries, and other activities and facilities identified by the State Department of Social and Health Services following the hearings on a potential site required in RCW 71.09.315. School Bus stops do not include bus stops primarily used for public transit.

Section 2. Amendment. Shoreline Municipal Code 20.20.046 S Definitions is amended to add:

Secure Community Transitional Facility (SCTF) A residential facility for persons civilly committed and conditionally released to a less restrictive community based - alternative under RCW 71.09 operated by or under contract with the Washington State Department of Social and Health Services. A secure community transitional facility has supervision and security, and either provides or ensures the provision of sex offender treatment services.

Section 3. Amendment. Shoreline Municipal Code Table Procedures and Administration Subchapter 1 General Provisions Quasi Judicial Decisions – Type C Table 20.30.060 is amended to add:

Table 20.30.060 – Summary of Type C Actions, Notice Requirements, Review Authority, Decision Making Authority, and Target Time Limits for Decisions

Action	Notice Requirements for Application and Decision (5)(6)	Review Authority, Open Record Public Hearing (1)	Decision Making Authority (Public Meeting)	Target Time Limits for Decisions	Section
Type C					
<u>7. SCTF-Special Use Permit</u>	<u>Mail, Post Site, Newspaper(7)</u>	<u>PC(3)</u>	<u>City Council</u>	<u>120 days</u>	<u>20.40.505</u>

- (1) Including consolidated SEPA Threshold determination appeal.
- (2) The rezone must be consistent with the adopted Comprehensive Plan.
- (3) PC = Planning Commission
- (4) HE = Hearing Examiner
- (5) Notice of application requirements are specified in SMC 20.30.120.
- (6) Notice of decision requirements are specified in SMC 20.30.150.
- (7) Notice of application shall be mailed to residents and property owners within one half mile of the proposed site.

Section 4. Amendment. Shoreline Municipal Code Zoning and Use Provisions Subchapter 2. Permitted Uses Other Uses Table 20.40.140 is amended to add:

20.40.140 Other uses.

NAICS#	Specific use	R4- R6	R8- R12	R18- R48	NB & O	CB & NCBD	RB & I
REGIONAL							
	<u>Secure Community Transition Facility</u>						<u>SCTFS</u> <u>-i</u>

P= Permitted	S= Special Use
C= Conditional use	-i= Indexed Supplemental Criteria
<u>SCTFS= Secure Community Transitional Facility Special Use</u>	

Section 5. Amendment. Shoreline Municipal Code Zoning and Use Provisions Subchapter 3. Index of Supplemental Use Criteria section 20.40.505 is added as follows:

-S-

20.40.505 Secure Community Transitional Facility.

A. Permitted as a SCTF Special Use- Type C action, granted by the City Council in the Regional Business and Industrial zones provided:

1. The maximum number of residents in a SCTF shall be three (3) persons, excluding resident staff; and
2. SCTFs should be located in relationship to transportation facilities in a manner appropriate to their transportation needs.
3. In addition to meeting the noticing requirements specified in SMC 20.30.120, noticing for SCTF Special Use Permit applications also includes mailing the notice of application to both residents and owners of real property located within one half mile of the site.
4. In no case shall a SCTF be sited adjacent to, immediately across a street or parking lot from, or within the line of sight of risk potential activities or facilities in existence at the time a site is listed for consideration. "Within line of sight" means that it is possible to reasonably visually distinguish and recognize individuals. For the purposes of these regulations, line of sight will be defined as 600 feet of unobstructed visual distance. In addition, regardless of visual obstructions, no SCTF shall be located within 200 feet of a "risk potential activity or facility". Risk potential activities and facilities include, but are not limited to:
 - Public and private schools;
 - School bus stops;
 - Licensed day care and licensed preschool facilities;
 - Public parks, publicly dedicated trails, and sports fields;

- Recreational and community centers;
- Playgrounds;
- Churches, synagogues, temples, and mosques; and
- Public libraries.

The distances specified in this subsection shall be measured by following a straight line from the nearest point of the building in which the SCTF is to be located, to the nearest point of the boundary line or property line of the lot on which the use from which the proposed SCTF is to be separated is located.

5. Each SCTF shall provide on-site dining, on site laundry or laundry service, and on-site recreation to serve the residents.
6. Applicants shall submit the following items in addition to the standard permit application:
 - a. The siting process used for the SCTF, including alternative locations considered.
 - b. An analysis showing that utmost consideration was given to potential sites such that siting of the facility will have no undue impact on any one racial, cultural, or socioeconomic group, and that there will not be an over concentration of similar facilities in the City or a particular neighborhood.
 - c. Proposed mitigation measures including the uses of extensive buffering from adjoining uses.
 - d. Demonstration of an approved Interlocal Agreement between DSHS and the City of Shoreline regarding security and operational procedures.
 - e. A schedule and analysis of all public input solicited or to be solicited during the siting process.

B. Decision Criteria. A Secure Community Transitional Facility Special Use Permit shall be granted by the City, only if the applicant demonstrates that:

1. The Secure Community Transitional Facility will not materially endanger the health, safety and welfare of the community;
2. The siting of a SCTF shall not create an over concentration within the City of Shoreline, a particular neighborhood, or community of such uses as defined by RCW 71.09, work release facilities, pre release facilities or similar facilities including Level 1, 2, and 3 registered sex offender housing.
3. The location, size and height of buildings, structures, walls and fences, and screening vegetation for the essential public facility shall not hinder or discourage the appropriate development or use of neighboring properties; and
5. The essential public facility will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding areas or conditions can be established to mitigate adverse impacts.

Section 6. Severability. Should any section, paragraph, sentence, clause or phrase of this regulation, or its application to any person or circumstances, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this regulation 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 regulation or its application to other persons or circumstances.

Section 7. Effective Date. This ordinance or a summary consisting of its title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

PASSED BY THE CITY COUNCIL ON AUGUST 26, 2002.

Mayor Scott Jepsen

ATTEST:

APPROVED AS TO FORM:

Sharon Mattioli
City Clerk

Ian Sievers
City Attorney

Date of Publication:
Effective Date:

**ATTACHMENT B:
ORDINANCE NO. 309
(STAFF ALTERNATIVE)**

ORDINANCE NO. 309

AN ORDINANCE AMENDING THE DEVELOPMENT CODE CHAPTERS 20.20.046, 20.30.060, 20.40.140, AND 20.40.505 TO DEFINE AND REGULATE SECURE COMMUNITY RESIDENTIAL FACILITIES IN ACCORDANCE WITH ENGROSSED SUBSTITUTE SENATE BILL 6594

WHEREAS, the City adopted Title 20 in the Shoreline Municipal Code on June 12, 2000;
and

WHEREAS, a notice of public hearing and the availability of the proposed amendments for review and public comment was published in the legal section of the Seattle Times on June 26, 2002; and

WHEREAS, a SEPA Determination of Nonsignificance (DNS) was issued on June 25, 2002 and the comment period ended on July 10, 2002; and

WHEREAS, the a copy of the proposed amendments to Title 20 were submitted to the Washington State Office of Community Development on June 26, 2002 pursuant to WAC 365-195-820;

WHEREAS, the Planning Commission conducted a public hearing on July 18, 2002 to consider public comments on the amendments proposed to Title 20 of the Shoreline Municipal Code Chapters 20.20.046, 20.30.060, 20.40.140, and 20.40.505 to define and regulate Secure Community Treatment Facilities;

WHEREAS, the Planning Commission forwarded a recommendation to City Council to adopt regulations to address the siting of Secure Community Treatment Facilities on July 18, 2002 that identified the Planning Commission as the review authority and the City Council as the decision making authority for Secure Community Treatment Facility Special Use Permits; and

WHEREAS, staff supported the Planning Commission recommendation with the exception of identifying the Hearing Examiner as the review and decision making authority for Secure Community Treatment Facility Special Use Permit; and

WHEREAS, the Council finds that the amendments recommended by the Planning Commission as amended by staff are adopted by this ordinance and are consistent with and implement the Shoreline Comprehensive Plan and comply with the adoption requirements of the Growth Management Act, Chapter 36.70A. RCW; and

WHEREAS, the Council is adopting the proposed amendments prior to September 1, 2002 to comply with Engrossed Substitute Senate Bill 6594 which requires local governments to

adopt regulations to provide for the siting of Secure Community Transitional Facilities or be preempted by the State Department of Social and Human Services siting guidelines.

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

Section 1. Amendment. Shoreline Municipal Code 20.20.044 R Definitions is amended to add:

Risk potential activity or risk potential facility In accordance with 71.09.020, means an activity or facility that provides a higher incidence of risk to the public from persons conditionally released from the special commitment center. Risk potential activities and facilities include: public and private schools, school bus stops, licensed day care and licensed preschool facilities, public parks, publicly dedicated trails, sports fields, playgrounds, recreational and community centers, churches, synagogues, temples, mosques, public libraries, and other activities and facilities identified by the State Department of Social and Health Services following the hearings on a potential site required in RCW 71.09.315. School Bus stops do not include bus stops primarily used for public transit.

Section 2. Amendment. Shoreline Municipal Code 20.20.046 S Definitions is amended to add:

Secure Community Transitional Facility (SCTF) A residential facility for persons civilly committed and conditionally released to a less restrictive community based - alternative under RCW 71.09 operated by or under contract with the Washington State Department of Social and Health Services. A secure community transitional facility has supervision and security, and either provides or ensures the provision of sex offender treatment services.

Section 3. Amendment. Shoreline Municipal Code Table Procedures and Administration Subchapter 1 General Provisions Quasi Judicial Decisions – Type C Table 20.30.060 is amended to add:

Table 20.30.060 – Summary of Type C Actions, Notice Requirements, Review Authority, Decision Making Authority, and Target Time Limits for Decisions

Action	Notice Requirements for Application and Decision (5)(6)	Review Authority, Open Record Public Hearing (1)	Decision Making Authority (Public Meeting)	Target Time Limits for Decisions	Section
Type C					
7. <u>SCTF-Special Use Permit</u>	<u>Mail, Post Site, Newspaper(7)</u>	<u>HE(4)</u>	<u>HE(4)</u>	<u>120 days</u>	<u>20.40.505</u>

- (1) Including consolidated SEPA Threshold determination appeal.
- (2) The rezone must be consistent with the adopted Comprehensive Plan.
- (3) PC = Planning Commission

- (4) HE = Hearing Examiner
- (5) Notice of application requirements are specified in SMC 20.30.120.
- (6) Notice of decision requirements are specified in SMC 20.30.150.
- (7) Notice of application shall be mailed to residents and property owners within one half mile of the proposed site.

Section 4. Amendment. Shoreline Municipal Code Zoning and Use Provisions Subchapter 2. Permitted Uses Other Uses Table 20.40.140 is amended to add:

20.40.140 Other uses.

NAICS#	Specific use	R4- R6	R8- R12	R18- R48	NB & O	CB & NCBD	RB & I
REGIONAL							
	<u>Secure Community Transition Facility</u>						<u>SCTFS</u> <u>-i</u>

P= Permitted	S= Special Use
C= Conditional use	-i= Indexed Supplemental Criteria
<u>SCTFS= Secure Community Transitional Facility Special Use</u>	

Section 5. Amendment. Shoreline Municipal Code Zoning and Use Provisions Subchapter 3. Index of Supplemental Use Criteria section 20.40.505 is added as follows:

-S-

20.40.505 Secure Community Transitional Facility.

A. Permitted as a SCTF Special Use- Type C action, granted by the Hearing Examiner in the Regional Business and Industrial zones provided:

1. The maximum number of residents in a SCTF shall be three (3) persons, excluding resident staff; and
2. SCTFs should be located in relationship to transportation facilities in a manner appropriate to their transportation needs.
3. In addition to meeting the noticing requirements specified in SMC 20.30.120, noticing for SCTF Special Use Permit applications also includes mailing the notice of application to both residents and owners of real property located within one half mile of the site.
4. In no case shall a SCTF be sited adjacent to, immediately across a street or parking lot from, or within the line of sight of risk potential activities or facilities in existence at the time a site is listed for consideration. "Within line of sight" means that it is possible to reasonably visually distinguish and recognize individuals. For the purposes of these regulations, line of sight will be defined as 600 feet of unobstructed visual distance. In addition, regardless of visual obstructions, no SCTF shall be located within 200 feet of a "risk potential activity or facility". Risk potential activities and facilities include, but are not limited to:

- Public and private schools;
- School bus stops;
- Licensed day care and licensed preschool facilities;
- Public parks, publicly dedicated trails, and sports fields;
- Recreational and community centers;
- Playgrounds;
- Churches, synagogues, temples, and mosques; and
- Public libraries.

The distances specified in this subsection shall be measured by following a straight line from the nearest point of the building in which the SCTF is to be located, to the nearest point of the boundary line or property line of the lot on which the use from which the proposed SCTF is to be separated is located.

5. Each SCTF shall provide on-site dining, on site laundry or laundry service, and on-site recreation to serve the residents.
6. Applicants shall submit the following items in addition to the standard permit application:
 - a. The siting process used for the SCTF, including alternative locations considered.
 - b. An analysis showing that utmost consideration was given to potential sites such that siting of the facility will have no undue impact on any one racial, cultural, or socioeconomic group, and that there will not be an over concentration of similar facilities in the City or a particular neighborhood.
 - c. Proposed mitigation measures including the uses of extensive buffering from adjoining uses.
 - d. Demonstration of an approved Interlocal Agreement between DSHS and the City of Shoreline regarding security and operational procedures.
 - e. A schedule and analysis of all public input solicited or to be solicited during the siting process.

B. Decision Criteria. A Secure Community Transitional Facility Special Use Permit shall be granted by the City, only if the applicant demonstrates that:

1. The Secure Community Transitional Facility will not materially endanger the health, safety and welfare of the community;
2. The siting of a SCTF shall not create an over concentration within the City of Shoreline, a particular neighborhood, or community of such uses as defined by RCW 71.09, work release facilities, pre release facilities or similar facilities including Level 1, 2, and 3 registered sex offender housing.
3. The location, size and height of buildings, structures, walls and fences, and screening vegetation for the essential public facility shall not hinder or discourage the appropriate development or use of neighboring properties; and
5. The essential public facility will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding areas or conditions can be established to mitigate adverse impacts.

Section 6. Severability. Should any section, paragraph, sentence, clause or phrase of this regulation, or its application to any person or circumstances, be declared unconstitutional or

otherwise invalid for any reason, or should any portion of this regulation 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 regulation or its application to other persons or circumstances.

Section 7. Effective Date. This ordinance or a summary consisting of its title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

PASSED BY THE CITY COUNCIL ON AUGUST 26, 2002.

Mayor Scott Jepsen

ATTEST:

APPROVED AS TO FORM:

Sharon Mattioli
City Clerk

Ian Sievers
City Attorney

Date of Publication:

Effective Date:

ATTACHMENT C: DSHS SITING AND OPERATION OF SCTFs



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

POLICY GUIDELINES:

The Siting and Operation of Secure Community Transition Facilities

Published in Fulfillment of the Requirements of
Chapter 12, Laws of 2001, E2, Section 201(6)(b)

Prepared by
The Special Commitment Center
Mark Seling, Superintendent

Department of Social and Health Services
Health and Rehabilitative Services Administration
Timothy R. Brown, Ph. D., Assistant Secretary

October 1, 2001



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

October 1, 2001

To interested Persons:

On June 26, 2001, Governor Gary Locke signed into law 3ESSB 6151, an act relating to the management of sexual offenders in the civil commitment and criminal justice systems. Among its many provisions, the law requires the Department of Social and Health Services (DSHS) to develop and publish policy guidelines on the siting and operation of secure community transition facilities. For your information, a copy of the department's guidelines are enclosed.

Secure community transition facilities (SCTF) are less restrictive alternative community-based facilities for civilly committed sexual offenders on court-ordered conditional release from the DSHS Special Commitment Center. A court of commitment can order an individual's conditional release from the Special Commitment Center when the court has determined that the individual's progress in treatment is such that the community can be adequately protected. Therefore, as required by the law and addressed in the policy guidelines, secure community transition facilities must provide highly structured and intensively supervised settings. As required by the court and the state law, SCTF residents, as part of their community transition plan, must continue their sex offender treatment with certified providers.

The 2001 Legislature recognized that secure community transition facilities will soon be needed in all areas of the state. To accomplish that goal, the law directs DSHS to work with and assist counties and cities to provide for the equitable distribution of such facilities. The law also requires counties and the cities within the county to notify each other of siting plans to promote the establishment and equitable distribution of secure community transition facilities.

DSHS is ready to work with local governments in this venture. As explained in the policy guidelines, the department stands ready to consult with and provide specific technical assistance to local governments in this process. DSHS staff contacts are listed in the appendix of the policy guidelines.

Thank you for your interest and participation in this challenging task.

Sincerely,

DENNIS BRADDOCK
Secretary

Enclosure

c: Governor Gary Locke

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I. Introduction

A. Background

On June 26, 2001, Governor Gary Locke signed into law 3ESSE 6151 (Chapter 12, Laws of 2001, E2). This omnibus legislation addresses four important policy issues related to the control and treatment of sexually violent predators who are civilly committed under Chapter 71.09 RCW to the Special Commitment Center (SCC). The new law:

1. Authorizes the Department of Social and Health Services (DSHS) to establish and operate a 24-bed secure community transition facility on McNeil Island for SCC residents on court-ordered conditional release from total confinement;
2. Reforms the state's sentencing structure for persons who commit serious sexual offenses;
3. Establishes procedures DSHS and local governments must follow to site additional secure community transition facilities in other areas of the state; and
4. Provides limited liability coverage for certified sex offender treatment providers meeting certain requirements.

B. Statutory Directive to DSHS to Publish Policy Guidelines

This document is in fulfillment of Section 201(6)(b), which requires DSHS "[to consult] with the joint select committee established in section 225 of this act, [to] develop and publish policy guidelines for the siting and operation of secure community transition facilities by October 1, 2001." The law also directs counties and cities to adopt or amend as needed their local procedures and regulations "to provide for the siting of such facilities consistent with statutory requirements applicable to these facilities."

The DSHS policy guidelines are based on the new law's facility siting and operating requirements that address public safety, site security, and general site and program characteristics. In addition to requiring DSHS to publish policy guidelines, the law directs DSHS to work closely with local governments on the siting of future secure

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community transition facilities (SCTF). The law also requires DSHS to approve selected SCTF sites. When approving future SCTF sites, DSHS will give priority consideration to public safety and security as required by law.

C. DSHS Technical Assistance Available to Local Governments

To assist local jurisdictions in determining potential suitable sites for secure community transition facilities, DSHS is developing a geographic information system (GIS). This system will have the capacity to generate local area maps depicting available data such as:

1. Locations of most existing risk potential activities and facilities;
2. Distances between potential SCTF sites and risk potential sites;
3. The number and location of existing residential facility beds operated by the Department of Corrections or the DSHS Mental Health Division in each jurisdiction;
4. The number of registered level II and level III sex offenders in specific areas (for example, a rate per 1000 population), including those who are listed as homeless (to the extent their locations are available from the counties); and
5. The average law enforcement emergency response time of local areas (to the extent these data are available from the local jurisdictions).

The department welcomes the opportunity to work with local governments throughout this process. DSHS staff are available to provide technical support and consultation to local governments on the DSHS GIS data and the DSHS policy guidelines, and assist local governments in amending, as needed, their local comprehensive plans, development regulations, zoning codes, and conditional use permit procedures. DSHS staff contacts are listed in the appendix of this document.

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II. Equitable Distribution of Secure Community Transition Facilities

The legislature requires DSHS to work with and assist local governments to provide for the equitable distribution¹ of secure community transition facilities. In the process of coordinating and deciding upon the siting of these facilities, Section 201(3) requires the counties and cities to give great weight to:

- A. The number and location of existing residential facilities operated by the Department of Corrections and the DSHS Mental Health Division in each jurisdiction in the county; and
- B. The number of registered sex offenders classified as level II or level III and the number of sex offenders registered as homeless residing in each jurisdiction in the county.

III. Minimum Siting Requirements in 3ESSB 6151

In the process of siting secure community transition facilities, the law requires local governments and the DSHS guidelines to address several significant factors relating to public safety, SCTF program components, and site characteristics. The law defines some of these factors as mandatory requirements that must be met when a facility is sited. For others, however, the law allows local governments some flexibility and discretion. Sections 204, 205, and 213 of 3ESSB 6151 direct local governments to consider the DSHS guidelines and establish development regulations, ordinances, plans, laws, and criteria decisions that are consistent with statutory requirements.

This section describes the statutorily mandated or minimum siting criteria that are defined and required in the law. Subsequent sections of this document contain DSHS' guidelines intended to assist local governments in the decision-making process.

A. DSHS' Approval of Selected Sites

¹ Section 201(9)(a) defines "equitable distribution" as the "siting or locating secure community transition facilities in a manner that will not cause a disproportionate grouping of similar facilities either in any one county, or in any one jurisdiction or community within a county, as relevant."

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The law requires DSHS to approve any sites selected.² DSHS will not approve any sites that do not meet all minimum requirements established in the law and included in Section III (this section) of the DSHS guidelines. As stated earlier, in approving sites, DSHS will give priority consideration to public safety and security factors.

B. Local Plans and Regulations May Not Preclude SCTF Siting

Secure community transition facilities are defined as "essential public facilities."³ As such, no local comprehensive plan or development regulation may preclude the siting of an SCTF. The siting requirements of 3ESSB 6151 are rooted in the concept of "fair share." Over time, these facilities need to be sited in all geographic areas of the state. In allowing local governments some discretion in the process of determining where to site SCTFs, the law recognizes that all jurisdictions are not equal. Differences in population density, availability of community and government resources, topography, etc., will make some areas more or less appropriate than others to be SCTF sites.

Therefore, local governments are encouraged to work together to implement comprehensive plans, ordinances, regulations, and permit procedures that meet the public safety and other requirements of the law and do not preclude siting. As stated earlier, DSHS stands ready to be of assistance to local governments.

C. Minimum Facility Size

The minimum size for any secure community transition facility is three beds.⁴

D. Public Safety Minimum Requirements

1. Proximity of SCTF to Risk Potential Activities and Facilities.

The law directs that the DSHS guidelines must not permit the location of a SCTF adjacent to, immediately across a street

² Section 204(2)(d)

³ Section 205(1)

⁴ Section 204(2)(c)

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or parking lot from, or within the line of sight of a risk potential activity or facility in existence at the time a site is listed for consideration.⁵ The law defines "risk potential activity" or "risk potential facility" to mean "an activity or facility that provides a higher incidence of risk to the public from persons conditionally released from the special commitment center." Included in this definition⁶ are the following:

- a. Public and private schools;
- b. School bus stops;
- c. Licensed day care and licensed preschool facilities;
- d. Public parks, publicly dedicated trails, and sports fields;
- e. Recreational and community centers;
- f. Churches, synagogues, temples, and mosques; and
- g. Public libraries

See Part IV for the suggested method for measuring distances between potential SCTF locations and risk potential activities or facilities.

2. Site Security

Security systems for all secure community transition facilities must meet the following minimum qualifications⁷:

- a. The security panel must be a commercial grade panel with tamper-proof switches and a key-lock to prevent unauthorized access.
- b. There must be an emergency electrical supply system that includes a battery back-up system and a generator.

⁵ Section 213(2). This section also defines "within line of sight" to mean that it is possible to reasonably visually distinguish and recognize individuals.

⁶ Section 102(7)

⁷ Section 215

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- c. The system must include personal panic devices for all staff.
- d. The security system must be capable of being monitored and signaled either by telephone through either a land or cellular telephone system or by private radio network in the event of a total dial-tone failure or through equivalent technologies.
- e. When on duty, SCTF staff must wear DSHS-issued photo-identification badges at all times.

3. SCTF Program Components

a. Treatment Providers Available

The law requires that appropriate mental health and sex offender treatment providers must be available within a reasonable commute.⁸ DSHS recognizes that the definitions of "available" and "reasonable commute" may vary from one area to another. "Availability" is measured by considering a number of factors including the qualifications of the available providers, their willingness to provide services, commute time and cost, etc.

As a rule of thumb, DSHS considers a one-hour commute time to be reasonable. However, this is an approximation. Actual commute times may vary depending upon travel routes, traffic, weather, and the norms for the area. For example, people who live in rural areas may have to travel more than an hour one-way for doctors' appointments and other services.

b. Program Staffing Requirements

Section 216 provides specific program staffing requirements for secure community transition facilities. Since these requirements do not have a direct effect on the siting of SCTFs, they are included in the appendix of this document.

⁸ Section 214(1)(d)

4. SCTF Site Characteristics

Minimum required site characteristics include:

- a. As described in Section III.D.2, a potential SCTF site must have available and reliable security monitoring services and appropriate back-up systems.⁹
- b. The site or building must be available for purchase or lease for the anticipated use period.¹⁰
- c. Appropriate permitting for a secure community transition facility must be possible under the zoning code of the local jurisdiction.

IV. Measuring the Distance Between Potential SCTF Sites and Existing Risk Potential Sites

The law requires the DSHS guidelines to specify how distance from the potential SCTF site and risk potential sites must be measured, including variations in that method based on the size of the SCTF property.

A. Typical Measurement Method

Distance between potential SCTF sites and existing risk sites typically should be measured "as the crow flies" in a straight line from point to point. Natural or man-made barriers, however, may exist that make this an invalid method of measurement. For example, the SCTF site and a risk potential facility are located on opposite sides of a six-lane fenced freeway. Another example may be a river or large crevasse running between the two sites. In either case, the "as the crow flies" measurement would be an inappropriate method to determine distance. The shortest reasonable distance, for example, may be the distance as measured down the street from one site and across a bridge to the other site.

⁹ Section 214(1)(c)

¹⁰ Section 214(1)(b)

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B. Measurement Method for Larger Properties

It is possible that a potential SCTF site could be located on property that is significantly larger than a typical residential lot. For example, a SCTF may be located within several acres in a semi-rural area. In this case, a risk potential facility that is adjacent to or across the street from the perimeter of the SCTF property does not automatically disqualify the SCTF property from further consideration. The local jurisdiction should measure the distance "as the crow flies" between the risk potential facility and the existing or potential location of the SCTF building. Again, as in the method above, this measurement method may be modified to account for natural or man-made barriers. If the measured distance is such that it is not possible to reasonably visually distinguish and recognize individuals, then the property may be considered further.

V. Identification and Review of Potential SCTF Sites

Section 213 of the law requires DSHS to develop guidelines that "balance the average response time of emergency services to the general area of a proposed secure community transition facility against the proximity of the proposed secure community transition facility site to risk potential activities and facilities in existence at the time the site is listed for consideration." As indicated in Part III.D.1, the statute further clarifies that this balance must:

- "Endeavor to achieve" an average law enforcement response time not greater than five minutes; and
- In no case, permit secure community transition facilities to be sited in locations that are adjacent to, immediately across a street or parking lot from, or within the line of sight of a risk potential activity or facility in existence at the time a site is listed for consideration.

To identify suitable sites¹¹ and achieve this balance, Section 204(2)(a) requires that "counties and the cities with the county must notify each other of siting plans to promote the establishment and equitable

¹¹ A "site" could be one parcel of land or a zone that includes at least one parcel that meets all requirements for siting a secure community transition facility.

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distribution of secure community transition facilities." Therefore, it is recommended that each county and the cities within the county collaborate in this identification and review process. Some counties may find it helpful to do the work as a consortium. DSHS provides the following guidance to local jurisdictions for the identification and review process:

A. First Step: Identify Potential SCTF Site(s) and Determine the Average Law Enforcement Response Time of the Local Area(s)

The local jurisdictions should identify potential SCTF site(s) and determine which are in areas with an average law enforcement emergency response time of five minutes or less, and which are in areas with an average response time greater than five minutes. To qualify for the second-step review, sites in areas with average response time greater than five minutes must be in areas that are within a reasonable range of five minutes, or with minimal changes, could be within a reasonable range. Local jurisdictions should document in writing the mitigating circumstances that support consideration of sites in areas with average response times greater than five minutes.

B. Second Step: Perform a Qualitative Review of Potential Sites

Local jurisdictions should use the following questions to perform a qualitative review of the potential sites in areas with reasonable average response time. There may be other factors unique to the local area that local jurisdiction(s) may want to consider. If so, the local jurisdictions should document what those factors are and the justification for their consideration. The following questions are not listed in priority order:

1. Where are the existing risk potential activities or facilities located in relation to the potential SCTF site? The law requires that great weight be given to sites that are located the farthest from any risk potential activity or facility. (Refer to Part IV.B for measuring distance).
2. How many and what type of risk potential facilities exist within an area surrounding a potential SCTF site? The jurisdiction may wish to determine this number within circles of varying

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distance from the potential SCTF site. For example, one circle may have a radius equal to the time it takes an average person to walk one or two miles. Other circles may be drawn representing fixed distances from the SCTF site.

3. Are there factors that make an existing risk potential facility more vulnerable than others? For example, how frequently is the facility used? Who typically uses the risk potential facility? Do children or other vulnerable persons frequent the location with little or no supervision? Do people typically frequent the site in large groups? In small groups? Individually? Is there site security available at a risk potential facility that makes it less vulnerable than others?
4. What is the topography of the potential SCTF site and/or nearby risk potential sites? Are there natural or man-made barriers (e.g., rivers, crevasses or rugged territory, fences or berms) that exist or could be constructed at reasonable cost?
5. What is the general character of the surrounding area? Is it densely populated with family residential areas nearby? Is it in an area that currently has a mixed use?
6. What are the traffic patterns and access in the surrounding area? Are there reasonably direct routes that law enforcement or other personnel can follow to respond promptly to an emergency?

C. Third Step: Address Final Review Questions

In the second and third steps, local jurisdictions may determine that some of the potential SCTF sites should be eliminated from further consideration. As a final step, local jurisdictions should review the remaining sites against the statutory requirements to balance response time and distance from risk potential facilities, consider equitable distribution factors, the availability of treatment providers, and zoning. DSHS provides the following questions for this review:

1. What is the average response time of the area(s) being reviewed? In comparing potential SCTF sites, the jurisdiction should "endeavor to achieve" a five-minute response time.

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Therefore, if all other factors are equal, jurisdiction(s) should give great weight to sites within areas that have relatively short response times.

2. If the area response time is greater than five minutes, what is the capacity of the local law enforcement agency to respond and secure the area in order to minimize the potential flight of an SCTF resident?
3. Are there existing correctional or mental health residential facilities in the surrounding area? How many? How many level II and level III sex offenders reside in the area?
4. What is the zoning of the area? What zoning changes, if any, would need to be made to accommodate the SCTF?
5. What is the availability of certified sex offender treatment providers and potential educational and employment opportunities in the surrounding area?

VI. Comparing and Selecting Potential SCTF Sites

DSHS will work with local jurisdictions in the process of comparing and selecting potential SCTF sites. When local jurisdictions have identified potential SCTF sites meeting the requirements, DSHS will review the local jurisdiction(s) recommendations and, as required by the law, make selections after considering the following:

- A. The jurisdiction(s) have satisfactorily addressed the issue of law enforcement emergency response time.
- B. Limited visibility can be achieved and maintained between the SCTF facility and adjacent properties before any persons are placed in the facility.
- C. There are natural barriers that exist or barriers that can be established between the SCTF site and risk potential activities or facilities that are nearby.

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- D. If an existing building is to be used for the SCTF, it is suitable as is or can be feasibly modified.
- E. Electronic monitoring services that allow specific monitoring of individual residents are available in the area.
- F. Traffic and access patterns associated with property are acceptable and do not create an undue burden on the neighboring territory.
- G. It is feasible to comply with zoning requirements within the necessary time frame.
- H. The facility has sufficient capacity for at least three residents and appropriate space for staff and program operations.
- I. Contractor(s) are available to install, monitor, and repair the necessary security and alarm systems.
- J. The rental, lease, or sale terms of the SCTF property are reasonable. This includes considering the length of the rental or lease agreement and the option to renew.
- K. There is reasonable proximity to available medical, mental health, sex offender, and chemical dependency treatment providers and facilities.
- L. The location is suitable for programming, staffing, and support.
- M. There is reasonable proximity to employment, educational, vocational, and other treatment plan components.
- N. For purposes of this consideration "availability of qualified treatment providers," takes into account provider qualifications and willingness to provide services, average commute time, and cost of services.

APPENDIX

I. Staffing Requirements

Section 216 requires secure community transition facilities to meet the following minimum staffing requirements:

- A. At any time the census of a facility is six or fewer residents, the facility must maintain a minimum staffing ratio of one staff per resident during normal waking hours and two awake staff per three residents during normal sleeping hours.
- B. At any time the census of a facility is six or fewer residents, all staff must be classified as residential rehabilitation counselor II or have a classification that indicates a higher level of skill, experience, and training.
- C. Before being assigned to a facility, all staff must have training in sex offender issues, self-defense, and crisis de-escalation skills in addition to departmental orientation and, as appropriate, management training. All staff with resident treatment or care duties must participate in ongoing in-service training.
- D. All staff must pass a DSHS check and the check is not subject to the limitations in chapter 9.96A RCW. A person who has been convicted of a felony, or any sex offense, may not be employed at the secure community transition facility or be approved as an escort for a resident of the facility.

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II. DSHS Staff Contacts for Technical Assistance

Please direct requests for assistance to either of the following:

Beverly Wilson, Associate Superintendent
Community Planning and Policy
DSHS Special Commitment Center
P.O. Box 45322
Olympia, Washington 98504-5322

360.902.8257
wilsobk2@dshs.wa.gov

OR

Elizabeth McNagny, Housing Policy and Land Use Administrator
DSHS Lands and Buildings Division
P.O. Box 45848
Olympia, Washington 98504-5848

360.902.8164
mcnaghec@dshs.wa.gov

ATTACHMENT D: FREQUENTLY ASKED QUESTIONS

DSHS SPECIAL COMMITMENT CENTER FREQUENTLY ASKED QUESTIONS

Answers to Questions about the DSHS Special Commitment Center and Statutory Requirements for Planning and Siting Secure Community Transition Facilities

BACKGROUND INFORMATION

1. What is the Special Commitment Center?

The Special Commitment Center (SCC), located on McNeil Island, is a total confinement facility designed to provide long-term rehabilitative treatment for certain sexual offenders. The program, operated by the Department of Social and Health Services (DSHS), is housed within the secure perimeter of the McNeil Island Corrections Center. Although the program operates within a total confinement facility, it is not a prison or criminal justice program. It is a specialized sexual deviancy treatment program.

Sex offenders who have completed their criminal sentences, but are found by state superior courts to meet the definition of "sexually violent predator" under chapter 71.09 RCW may be civilly committed to the SCC for care, control, and custody. They remain in the total confinement treatment program receiving ongoing treatment until the court determines that they are ready for placement in a community supervised living arrangement (LRA).

2. What does "less restrictive alternative" mean? What is a "secure community transition facility?"

A less restrictive alternative placement is defined in the state law as a living arrangement that is less restrictive than total confinement. An LRA placement may be in a residential facility program operated or contracted by the Department of Social and Health Services or in the person's own home in the community.

"Secure community transition facility" (SCTF) is the statutory name for a residential facility program operated or contracted by DSHS. As stated in RCW 71.09.020, "a secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services." It offers 24-hour staffing and line-of-sight supervision by escorts when residents leave the facility.

3. How does a state superior court decide when an SCC resident is ready for conditional release from the SCC total confinement facility? What are the grounds for making that decision?

Each committed individual receives an annual review by qualified professionals to determine the person's progress in treatment. A civilly committed individual has a right to an annual hearing in the superior court of commitment to determine his or her readiness for conditional or unconditional release. The superior court judge or jury makes the decision based on expert testimony of the person's history and progress. If the court determines that the community can be adequately protected and it is in the person's best interest to be

conditionally released, the court may order the person's conditional release to a less restrictive alternative placement. The determination that an individual is ready for conditional release is based on the individual's behavior, psychological testing, and expert testimony.

4. Why is it necessary to establish LRA housing?

As required by state law, individuals who have been determined by the courts to be ready for conditional release have the right to live in settings that are less restrictive than total confinement. As discussed below, for the civil commitment program to meet the standard of "constitutionally adequate mental health treatment", residents ready for conditional release must have an opportunity for placement in a less restrictive alternative placement. Many SCC residents do not have the personal or family resources necessary to provide the level of support and supervision required for successful conditional release. A structured and closely supervised community residential program provides community protection and an appropriate environment in which the conditionally released person can continue treatment, learn appropriate life skills, and make a successful transition to community living while being closely monitored.

In August 1991, a civil rights complaint was filed in federal court alleging violations of the constitutional rights of SCC residents. In 1994, Federal District Court Judge William Dwyer entered an order and injunction requiring the SCC to provide the residents with "constitutionally adequate mental health treatment." Since 1995, the court has held annual or semiannual hearings on the state's progress toward meeting the court's requirements. Following the November 1999 hearing, the federal court ordered that a penalty of \$50 per day per resident accrue, but deferred the state's payment of the contempt sanctions because many improvements had been made within the SCC program. The court also found that the lack of less restrictive alternative housing options was a significant issue and ordered the state to "[make] arrangements...for the community transition of qualified residents, under supervision, when they are ready for a less restrictive alternative."

Following the July 2001 hearing, the court found that the state's enactment of legislation (3ESSB 6151) establishing the McNeil Island Secure Community Transition Facility was a significant positive step. The court continued the accrual of the contempt sanctions (now more than \$4 million), however, until the state has established one or more LRA facilities on the mainland.

5. Why doesn't the state appeal the federal court orders? What would happen if the state simply refused to provide less restrictive alternative housing options?

The state has appealed past federal court orders and lost. At the very least, a refusal to implement less restrictive alternative housing options may result in an order requiring the state to pay a large sanction that could continue until compliance with the court order is met. A refusal could ultimately place the SCC program in jeopardy and lead to the closure of the program and release of SCC residents to settings with little or no supervision.

6. How many sex offenders reside in the SCC?

As of January 2002, there are 151 residents residing in the Special Commitment Center total confinement facility, including one woman who is housed at a special unit in the

Washington Corrections Center for Women at Purdy. There are also seven SCC residents who have received court-ordered conditional releases. Three of these individuals are living in private residences with their families, three are in a special needs program, and one is in the recently established McNeil Island Secure Community Transition Facility. For the past several years, admissions to the SCC have been averaging about 2.5 residents per month.

SCC TREATMENT PROGRAM AND SECURITY REQUIREMENTS

7. What kind of rehabilitative treatment do SCTF residents receive?

Prior to their conditional release, SCC residents participate in an intensive treatment program at the total confinement facility. The treatment program requires the resident to participate in intensive individual and group sessions with qualified professionals, undergo periodic polygraph (lie detector) and plethysmograph (sexual arousal) tests, and, in some cases, take medications. Residents who successfully complete the first five phases of treatment are placed into Phase 6 - Discharge Readiness to begin their preparation for a community transition placement. Residents begin the seventh treatment phase in their less restrictive alternative placements, during which the residents must continue to participate in intensive treatment with a court-approved community sex offender treatment provider. The SCTF staff work as a team with the treatment provider and the community corrections officer to monitor each resident's progress in the community transition program.

8. What level of security does an SCTF provide for community protection?

State law requires SCTFs to provide a high degree of security and staff supervision. The coordination and teamwork of the SCTF program staff, sex offender treatment provider, community corrections officer, and local law enforcement are essential to assuring community protection. Security measures include:

- To protect the community when the person is conditionally released, the court of commitment orders specific conditions that the person must follow. The law requires serious violations of court-ordered conditions, including any alleged criminal offenses, must be reported immediately to law enforcement. If the person is not arrested and detained by law enforcement, the person must be transferred to the SCC total confinement facility pending the outcome of a court review.
- When a property is considered for an SCTF, the law requires DSHS and local governments to consider and address many factors. Key factors include the average law enforcement response time of the area; the distances between the SCTF property and "risk potential activities and facilities" such as child care centers, schools, school bus stops, etc.; whether barriers exist or can be installed to shield visibility between the SCTF and adjacent properties; the availability of electronic monitoring services; and access to community services such as treatment, employment, etc.
- The law requires the SCTF to provide intensive staffing ratios. In facilities with six or fewer residents, there must be a ratio of one staff on duty for each resident during the day and evening hours, and two staff for every three residents during the night hours.

- Unless otherwise ordered by the court, each SCTF resident must be closely supervised (on a one-to-one basis) by a staff person or court-authorized escort when the resident leaves the SCTF premises for any purpose. The staff/escort must remain with the resident for the duration of the outing, even when the resident may be working at a job.
- The SCTF facility must have household and perimeter security systems installed that meet specific technical specifications and offer appropriate emergency backup provisions. This includes providing a tamper-proof security panel, emergency electrical supply system, personal panic devices for all staff, staff photo ID badges, etc.
- SCTF staff must meet specific qualifications and receive specialized in-service training on a range of topics before they begin working with residents. Each staff is required to pass a thorough state and federal criminal background check and not have a history of any felony convictions.
- Staff and escorts must be fully informed about each resident's offense history and behavior patterns. Although staff and escorts do not carry guns, they must be equipped with cell and radio phones, and be trained in self-defense and appropriate emergency response procedures.
- Residents are allowed to leave the facility premises only for specific purposes, as authorized by the court order, and only with prior approval of the resident's assigned community corrections officer, treatment provider, and the SCTF program manager. Reasons for leaving the facility may include treatment, employment interviews, employment, training, and other activities, such as family visits, that are specifically addressed in the resident's treatment plan.
- Unless otherwise ordered by the court, each resident must wear an individual electronic monitoring device.

9. If an SCTF is sited in our county, will the residents placed there be the same ones who were committed from our county?

It is possible, but not a given. The court orders the placement and considers many factors including whether housing is available that meets the court's conditions, a qualified community sex offender treatment provider (therapist) has agreed to work with the resident and make regular reports to the court, the location of victims, etc.

**PLANNING AND SITING REQUIREMENTS FOR
SECURE COMMUNITY TRANSITION FACILITIES**

10. What is being proposed? What does the new law require?

In June 2001, the state enacted 3ESSB 6151 (Chapter 12, Laws of 2001, E2). This law provides direction to DSHS and local governments in the planning and siting of secure community transition facilities. The law requires counties and cities that are fully planning under the Growth Management Act (GMA) to include a process in their comprehensive plans for identifying and siting SCTFs, and include SCTFs in their development regulations. Counties and cities not fully planning under GMA also must establish a planning process

and development regulations to provide for siting SCTFs. The law also provides specific siting requirements and community safety standards that DSHS and local governments must follow.

11. What is the role of the local jurisdiction? What is the role of DSHS?

SCTFs are essential public facilities of a statewide nature. Under RCW 36.70A.200, no local comprehensive plan or development regulation may preclude the siting of essential public facilities, including SCTFs (see WAC 365-195-340 on comprehensive plans, and WAC 365-195-840 on development regulations).

State regulations recommend that local governments take a cooperative inter-jurisdictional approach, consistent with countywide planning policies, in planning for difficult-to-site essential public facilities of a countywide, regional or statewide nature. The regulations recommend jurisdictions agree to mitigate any disproportionate financial burden that may fall on the jurisdiction that becomes the site of a facility of a statewide, regional, or countywide nature.

Local jurisdictions have the lead role in defining a process and appropriate areas for siting SCTFs. In other words, local jurisdictions are responsible for planning and permitting. To plan for the siting of these facilities, local governments must conduct the analysis necessary to identify areas or sites that meet the minimum criteria required by state law. As the permitting authority, local government is not responsible for buying or leasing land or buildings for SCTFs.

DSHS is required to work with local governments in the planning process. To help local jurisdictions in the planning process, DSHS will provide program information, GIS mapping and other technical support. As part of this support, DSHS is building a comprehensive geographic information system to assist in the mapping and review of potentially suitable areas for siting SCTFs. Once a local jurisdiction has identified appropriate area(s), DSHS will review the available properties within those areas to identify specific sites. After identifying specific sites, DSHS will apply to the local jurisdiction for the appropriate permits.

12. What is the role of the individual towns and cities within the county? Is my city required to find a site separate from sites that may be identified by the county?

Ideally, a county and its cities would follow the recommendations in WAC 365-195-340 to define a cooperative inter-jurisdictional approach to siting SCTFs. At a minimum, the state law requires counties and cities within the county to notify each other of siting plans. The legislation does not further define how counties and cities must coordinate. Early coordination, with counties taking a lead role, is advisable because it allows the seamless review of risk potential facilities and equitable distribution factors.

All counties and cities must establish a process and development regulations to provide for siting SCTFs. Except where countywide planning policies have otherwise dictated siting choices, development regulations should provide for the possibility of siting each of the listed essential public facilities somewhere within each jurisdiction's planning area. DSHS expects that a coordinated countywide analysis will determine that some areas within a county's boundaries will be preferred over others for siting SCTFs.

13. On August 31, 2001, DSHS notified all 39 counties that secure community transition facilities will need to be sited within 12 of the 39 counties sometime between May 2004 and May 2007. Our county was one of the 12 counties on the list. Are the planning and siting requirements different for our county and its cities than the requirements that apply to all counties under RCW 36.70A.200?

As required by law, DSHS projected the minimum and maximum number of additional SCTF beds (beyond those provided at the McNeil Island SCTF) that may be needed between May 2004 and May 2007. On August 31, 2001, DSHS notified all counties of the projected numbers. The law required the counties, in turn, to promptly notify their cities of the projected numbers. The DSHS letter informed counties that SCTFs are projected for needed in counties that had three or more residents in the SCC as of April 1, 2001, with Pierce County excluded. These 12 counties are Chelan, Clark, Cowlitz, Franklin, Grays Harbor, King, Kitsap, Snohomish, Spokane, Thurston, Whatcom, and Yakima.

All counties and their cities are legally required to develop a process for siting SCTFs and to adopt development regulations that provide for the siting of SCTFs consistent with applicable statutory requirements. To assure that SCTFs can be sited and ready for occupancy when they will be needed, the 12 identified counties and their cities must meet the September 1, 2002 deadline for updating comprehensive plans and development regulations. To succeed in meeting this deadline, jurisdictions may benefit from adopting a coordinated approach and working closely with DSHS to provide more specific siting guidance.

The 27 other counties and their cities may decide, at this time, to identify only general areas for siting SCTFs that are consistent with statutory criteria. The jurisdictions in the 12 counties, however, may determine that it is in their communities best interests to identify several specific areas or properties that meet statutory requirements and would be appropriate locations for an SCTF. For example, if a local jurisdiction owned an appropriate property and wanted to identify it for future SCTF use, it could be zoned "essential public facility," or something equivalent, with SCTFs established as a permitted use in that district.

14. What steps does DSHS suggest for coordinating with local jurisdictions?

Although we anticipate there will be local variations, we suggest the following steps:

- a. DSHS, counties and cities share data on risk potential locations, law enforcement response time, and locations specified in equitable distribution requirements.
- b. DSHS charts the data available and provides counties and cities with Geographic Information System (GIS) maps.
- c. Counties and the cities within the county establish a coordinated countywide planning process. At a minimum, a coordinated process would include sharing early drafts of revisions to comprehensive plans and development regulations.
- d. Counties and cities decide on appropriate criteria consistent with the state law, and apply GIS mapping to assure that the local plans and regulations will not preclude the siting of a SCTF.

- e. Counties and cities adopt comprehensive plan amendments, as necessary, and development regulations that define the siting process, criteria, and areas or site(s) appropriate for siting SCTFs.
- f. DSHS reviews available sites within the areas identified by the local jurisdiction and approves sites that meet state requirements. As needed, DSHS selects one or more potential SCTF sites within the areas identified by the local jurisdiction.
- g. DSHS, in consultation with the local jurisdiction, holds public hearings on the potential sites as required by state law.
- h. DSHS selects the preferred site for the facility.
- i. DSHS complies with the local jurisdiction's permitting requirements.

15. What GIS data is DSHS collecting and what will the GIS maps show?

DSHS is gathering data that include:

- *Locations of the risk potential facilities referenced in the law.* These risk potential facilities include public and private schools, licensed day care facilities, licensed preschool facilities, public parks, publicly dedicated trails, playgrounds, and sports fields, recreational and community centers, school bus stops, churches, synagogues, temples, and mosques, and public libraries.
- The concentration of Level II and Level III sex offenders and transient Level II and III sex offenders residing in local jurisdictions.
- The concentration of Department of Corrections' and DSHS Mental Health Division residential facilities in local jurisdictions.
- Average emergency response times of local law enforcement, as available.
- Areas such as wetlands, national forests, mountains, etc. that would not be suitable for building.

DSHS will be able to develop maps providing detailed information about specific local areas. These maps can be shaded to compare the relative risk – low, medium, high – of different sites or areas based on the number and locations of risk potential facilities and concentration of sex offenders and residential beds, etc.

If your county has not been contacted by DSHS regarding GIS data needs, please contact Vicki Kim at 360-902-0764. Cities may wish to coordinate their efforts through their county's GIS department to assure consistency and seamless coverage.

16. Who is responsible for the public's participation in the planning and siting process?

The local jurisdiction is responsible for the public participation process required for revisions to its comprehensive plan and development regulations.

DSHS is responsible for the public participation process during the final site selection. This process occurs after DSHS has reviewed the area(s) identified by the local jurisdiction as appropriate for siting an SCTF, and has selected potential sites.

The local government is responsible for meeting the public notice and hearing requirements associated with permitting. In that case, DSHS public notice and hearing requirements do not apply to the extent they would duplicate the requirements of local land use regulations.

17. What happens if our county and its cities do not engage in this process, or if we go through the planning exercise, but refuse to select a site or cannot agree on a site?

The Growth Management Act requires the comprehensive plan of any county or city planning under GMA to include a process for identifying and siting essential public facilities, including secure community transition facilities. It also requires that the counties and cities adopt or amend their development regulations to provide for the siting of secure community transition facilities consistent with state law. Counties and cities not planning under GMA must also establish a process for siting SCTFs and adopt or amend their development regulations as necessary. Local comprehensive plans and development regulations may not preclude the siting of essential public facilities. Failure to comply with these requirements could result in sanctions under the Growth Management Act, such as making the city or county ineligible for state funding through the Public Works Trust Fund.

DSHS must provide a status report to the legislature in December 2002 on the results of the planning process for siting SCTFs. If it appears that an insufficient number of beds will be sited in a timely manner, the department's report must recommend a progression of methods to facilitate siting in counties and cities including, if necessary, preemption of local land use planning process and other laws.

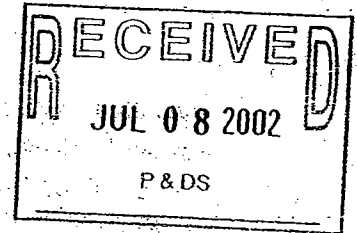
18. Where can we get more information?

DSHS staff welcome the opportunity to meet with local elected officials and staff, planning commission members, and others. For more information about the Special Commitment Center and SCTF program or to arrange a meeting with DSHS, please contact Beverly Wilson, SCC Associate Superintendent for Community Programs, at (360) 902-8257. For information about planning requirements, please contact Elaine Taylor, DSHS Land Use Administrator for SCTFs, at (360) 902-8184.

ATTACHMENT E: COMMENT LETTERS

July 5, 2002

Rachel Markle
Senior Planner
City of Shoreline
17544 Midvale Avenue North
Shoreline, WA 98133-4921



RE: Secure Community Transition Facilities-DNS

Dear Rachel,

I recently reviewed your proposed amendments to the City Code for SCTFs. I have the following suggestions:

1. You have no definition of "Line of Sight". I recommend that you add one to 20.20.046. DSHS recently made a presentation to the City of Bothell City Council and stated that "line of sight" was defined by them as follows:

"Line of Sight" with respect to siting of Secure Community Transition Facilities means 600 feet from a "risk potential activity or facility," which distance has been determined to be the maximum distance at which facial features and gender can be reasonably distinguished and recognized.

I suggest that the City of Shoreline change their proposed amendment to 20.40.505.3 to include the phrase line of sight, instead of, or within the line 200 feet of a "risk potential activity, add facility to the wording, and change the distance to 600 feet.

I also suggest you add a definition of risk potential activity or facility such as:

"Risk potential activity" or "risk potential facility", in accordance with RCW 71.09.020, means an activity or facility that provides a higher incidence of risk to the public from persons conditionally released from the special commitment center. Risk potential activities and facilities include: Public and private schools, school bus stops, licensed day care and licensed preschool facilities, public parks, publicly dedicated trails, sports fields, playgrounds, recreational and community centers, churches, synagogues, temples, mosques, public libraries, and others identified by the Department of Social and Health Services following the hearings on a potential site required in RCW 71.09.315. For purposes of this chapter, "school bus stops" does not include bus stops established primarily for public transit.

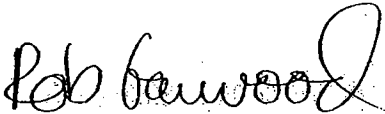
This will both limit the available sites and provide the maximum distance from these facilities that even the state has accepted as reasonable. I also think that the notice requirements in the City should require that notice of an application for an SCTF be mailed to all residents and owners within one half mile of the proposed site. This is

consistent with DSHS' stated policy to provide notice to residents within one half mile of a proposed site. I saw no indication that notice requirements were being amended.

I hope to be able to make these comments in person at the public hearing on July 18, 2002. I would appreciate your sharing these written comments with the Planning Commission.

Thanks for taking on this difficult task.

Sincerely,



Rob Garwood AICP
155 NW 183rd Street
Shoreline, WA 98177
(206) 546-2778 (home)
(425) 486-8152 (work)



BW

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
PO Box 45322 • Olympia WA 98504-5322

July 18, 2002

City of Shoreline Planning Commission
City of Shoreline
17544 Midvale Avenue N.
Shoreline, Washington 98133-4921

RE: Amendments to Title 20 of the Shoreline Municipal Code regarding the siting of Secure Community Transition Facilities

Dear Commissioners:

Thank you for the opportunity to provide testimony on the proposed amendments to the Shoreline Municipal Code. We appreciate the City's interest in working with the Department of Social and Health Services (DSHS) to assure that the City's approach to siting secure community transition facilities (SCTF) meets the requirements of state law. We look forward to continuing to work in partnership with the City to adequately and appropriately address this important need.

As you know, RCW 36.70A.200, as amended by ESSB 6594 (Chapter 68, Laws of 2002), requires all counties and cities to establish a process and amend development regulations as necessary "to provide for the siting of secure community transition facilities consistent with statutory requirements applicable to these facilities." At a minimum, this means:

- The local process and regulations must not preclude the siting of an SCTF.
- The land use regulations must be consistent with, and no more restrictive than, the requirements for siting and operating an SCTF set out in chapter 71.09 RCW.
- ESSB 6594 (Chapter 68, Laws of 2002), Sec. 7, states that the requirements set out in RCW 71.09.285 through 71.09.340 are minimum requirements to be applied by DSHS. This does not prevent a city or county from adopting development regulations, as defined in RCW 36.70A.030, unless the proposed regulation imposes requirements more restrictive than those specifically addressed in RCW 71.09.285 through 71.09.340. Regulations that impose requirements more restrictive than those specifically addressed in these sections are void. Nothing in these sections prevents DSHS from adding requirements to enhance public safety.
- The jurisdiction must consider the effect of "equitable distribution factors" on the siting of a facility as addressed in RCW 71.09.250(8). A written policy or statement that describes how your jurisdiction weighs this requirement against other public safety siting requirements of chapter 71.09 RCW is evidence of your consideration.



- The zones or areas that the jurisdiction identifies as appropriate for siting secure community transition facilities must include potential sites that meet the criteria in state law. The jurisdiction has the option of identifying specific sites or parcels that meet the criteria in state law. A potential site means either buildable land or a suitable existing facility that is available for lease or purchase at a reasonable or fair market rate.

To meet these requirements, we suggest that a jurisdiction complete sufficient analysis to determine whether or not areas or zones designated as appropriate for siting an SCTF will actually yield potential sites that meet the criteria in chapter 71.09 RCW. At a minimum, this means analyzing risk potential locations and equitable distribution factors. To assist you in this analysis, DSHS developed a Geographic Information System (GIS) that maps the locations of risk potential facilities and activities and provides information on equitable distribution factors. DSHS has provided this GIS data to your planning staff and will provide updated data as it becomes available.

- The local jurisdiction's siting and permitting processes that would be required when DSHS actually sites a facility must be designed to result in a permitted site in a timely manner. This means that the siting process will enable the department to complete construction or renovation of a facility so that it is available for occupancy when needed. A reasonable amount of time to complete local land use permitting process is 180 days from the inception of any local requirements. It is the department's expectation that local jurisdictional permitting processes and regulations (e.g., building permits) for SCTFs will be no more stringent than the requirements for group care facilities.

The enclosed letter from DSHS Secretary Dennis Braddock, dated June 20, 2002, provides additional information regarding the meaning of these requirements for counties and cities subject to preemption of local land use authority under ESSB 6594.

Specific Comments on Municipal Code Amendment

DSHS offers the following comments on the City of Shoreline's draft Ordinance No. 309 to amend the City's municipal code for siting secure community transition facilities.

FINDINGS. We would like to clarify that it is the legislation, specifically Section 9(1) of ESSB 6594, rather than either the Department of Social and Health Services or its Policy Guidelines, that preempts and supersedes the regulations of jurisdictions subject to that section if they fail to comply with the requirements of RCW 36.70A.200.

Section 2. Table 20.30.060. The proposed ordinance would add the new process for an SCTF – Special Use Permit to the list of Type C (Quasi-judicial) processes in Table 20.30.060. The criteria for the SCTF – Special Use Permit would be listed in SMC Chapter 20.40 Subchapter 3, "Index of Supplemental Use Criteria." The staff note indicates that the SCTF Special Use decision criteria replace, rather than supplement, the Special Use Decision Criteria in SMC 20.30.330. To avoid possible confusion in the

future, we suggest making it clear in the ordinance itself that Section 20.30.330 does not apply to SCTFs, and that SMC 20.40.505, rather than SMC 20.30.330, is controlling.

We note that staff supports notifying residents and owners within one-half mile of a proposed site. This corresponds to the notification requirement in state statute, and would facilitate combined state/local mailings.

Section 4. SMC 20.40.505. Section 4 of the proposed ordinance would add a new section 20.40.505, "Secure Community Transitional Facility," to Subchapter 3, Index of Supplemental Use Criteria.

- **Maximum number of residents.** Section A.1. of the City's proposed draft SCTF Regulations states that the maximum number of residents in an SCTF shall be three (3) persons, excluding resident staff.

As required by RCW 71.09.250(6)(a), DSHS has projected a need for a minimum of 5 beds to a maximum of 15 beds in King County between now and 2007. Our plan is to site one 12-bed facility in King County, which would be built as two six-bed buildings on one site. Determining the size of an SCTF is within the scope of the department's decision-making authority granted by the legislature. Because of the statutory requirements for intensive supervision, security measures, and programming, siting and operating several very small facilities in King County would be cost-prohibitive. We have calculated the capital and operating costs for both a 3-bed facility and a 12-bed facility. Although the statutory requirements imposed for public safety and security make both models very expensive, the 12-bed model offers some economy of scale that the 3-bed model cannot offer. Operating four three-bed facilities for one year would be approximately \$4.271 million versus \$2.936 million for a single 12-bed facility. This is an increased cost of 31 percent per year in operating costs. In addition, we have estimated that it would cost an additional \$900,000 to site and construct facilities in four locations, which represents an increase of 45 percent in one-time capital costs. As stated above, these increases would be cost-prohibitive and your proposed ordinance limiting the capacity of the facility could be preclusive.

- **Within line of sight.** Section A.3 states: "No SCTF shall be allowed adjoining, immediately across a street or parking lot from, or within the line 200 feet of a 'risk potential activity' as defined in RCW 71.09.020, as amended."

In setting out the contents for the Policy Guidelines, RCW 71.09.285 states that "in no case shall the policy guidelines permit location of a facility adjacent to, immediately across a street or parking lot from, or within the line of sight of a risk potential activity or facility in existence at the time a site is listed for consideration." It goes on to define "within the line of sight" as meaning "that it is possible to reasonably visually distinguish and recognize individuals."

DSHS recently completed field tests to determine what linear distance is a reasonable measure of an unobstructed line of sight. In our tests, we determined that an individual might reasonably visually distinguish and recognize other individuals who are standing within 600 feet, assuming the terrain is unobstructed.

We suggest that you amend your proposed ordinance with wording something like this:

In no case shall a secure community transition facility be sited adjacent to, immediately across the street or parking lot from, or within the line of sight of risk potential activities or facilities in existence at the time a site is listed for consideration. "Within line of sight" means that it is possible to reasonably visually distinguish and recognize individuals. For the purposes of granting a conditional use permit for siting a secure community transition facility, the Hearing Examiner shall consider an unobstructed visual distance of 600 feet to be "within line of sight." Through the Secure Community Transition Facility – Special Use Permit process, "line of sight" may be considered to be less than 600 feet if the applicant can demonstrate that visual barriers exist or can be created that would reduce the line of sight to less than 600 feet."

- **List of Risk Potential Activities and Facilities.** We also bring to your attention that your list of existing risk potential facilities in Section A.3 is not identical to the list defined in state law. To avoid confusion and potential conflicts, we suggest that you make your list identical to the one in state law.
- **On-Site Dining, On-Site Laundry or Laundry Service, and On-Site Recreation to Serve the Residents.** The proposed ordinance requires that each facility provide on-site dining, on-site laundry or laundry service, and on-site recreation facilities to serve the residents. The staff note indicates that these criteria are proposed to increase assurances that the risks to the community will be minimized by limiting access of untrained service providers to and from the SCTF. We are unclear about what the proposed ordinance is attempting to address.

SCTFs are residential facilities and these services and facilities would be included in SCTF building designs. All of these services and facilities are a part of the community transition program and are needed to help the residents learn essential living skills such as cooking, personal grooming and laundry, etc. We view this as a program issue, not a land use issue. From our point of view, we believe your requirement is a moot point. If it is intended to impose additional security measures on the community transition program, we would be concerned and consider the requirement to be more restrictive than the security measures provided in RCW 71.09.295 through 71.09.315.

- **Equitable Distribution and Analysis of Undue Impacts.** In the proposed ordinance, equitable distribution is addressed in 1) the permit application, which requires "an analysis showing that utmost consideration was given to potential sites such that siting of the facility will have no undue impact on any one racial, cultural, or socio-economic group, and that there will not be an over concentration of similar facilities in the City or a particular neighborhood"; and 2) the decision criteria, where the applicant must demonstrate that "the siting of an SCTF shall not create an over concentration within the City of Shoreline, a particular neighborhood, or community of such uses as defined by RCW 71.09. work release facilities, prerelease facilities or

similar facilities including Level 1,2 and 3 registered sex offender housing." We have several concerns with these requirements:

- ✓ The equitable distribution requirements of RCW 71.09.250(8) and 71.09.250(9) do not address racial, cultural, or socioeconomic groups. While we appreciate and share the city's concern with social equity and justice, we are concerned that this requirement could be applied in a preclusive manner.
- ✓ The term "over concentration" is not defined. Since the department is limited to the zones that the City has selected, has no evidence that the City has considered equitable distribution in selecting those zones, and has not been given a way to evaluate "over concentration," we cannot be confident that any site we would select would meet this criterion to the City's satisfaction. Thus, this requirement could be applied in a preclusive manner.
- ✓ The locations of residences of Level I registered sex offenders are not included in the definition of equitable distribution in RCW 71.09.250(9). In the GIS data we have provided the city, we have included data on all levels of sex offenders because of the limitations of the data source available to us. We would suggest, however, that the City not reference Level I sex offenders in your regulations since they are not included in the state law.
- **Proposed mitigation measures including the use of extensive buffering from adjoining uses.** We are concerned with the type of buffering that will be required. The term "extensive" is not defined. One of the siting criteria in RCW 71.09.290 is whether limited visibility between the facility and adjacent properties can be achieved prior to placement of any person. Another is the existence of or ability to establish barriers between the site and the risk potential facilities and activities. In siting the facility, DSHS will comply with state law, as well as the city's setback, landscaping, minimum lot area, and lot coverage requirements for this type of use.
- **A detailed security plan for the facility and the residents, and proposed operating rules for the facility.** In regard to the detailed security plan and proposed operating rules, we understand the City's interest in ensuring the safe operation of the proposed SCTF. We believe that an essential component of operating a safe facility is a strong partnership between DSHS and the local law enforcement agency and the local community. To have an effective partnership, we must be able to address issues on an ongoing basis, not just at the time of siting the facility. For security reasons, we prefer not to make these documents a part of the public record by including them in the application.

ESSB 6594 (Chapter 68, Laws of 2002), Section 16, requires the state, at the request of a jurisdiction where the facility is sited, to enter into a long-term contract regarding operating procedures of the facility. We believe that such a contract, rather than the zoning code, is the best place to memorialize the respective roles and responsibilities of the state and the local government. The contract can be amended by mutual agreement to address issues as they arise. Security measures for the program can be better handled on an on-going basis through the contract between the City and DSHS, through the operational advisory board for the SCTF that would

be established under RCW 71.09.320, and through informal working partnerships between DSHS and local law enforcement.

- **Interlocal Agreement.** The staff note suggests replacing application submittal requirements 5(d) and 5(e) with a requirement for "Demonstration of an approved Interlocal Agreement between DSHS, the City of Shoreline, and the Operational Advisory Board of the SCTF regarding security and operational procedures."

As noted above, Section 16 of ESSB 6594 requires the department to enter into a long-term contract for the operation of a secure community transition facility at the request of the city or county in which it is located. We understand that both state and local government need some assurance that this contract will be completed in a timely manner. We would not want the contracting process itself to delay the land use permitting process. We would suggest that the City require a commitment by the state to enter into a long-term contract describing the operating procedures of the facility as a condition for the SCTF-Special Use permit.

Also, DSHS is not authorized to enter into an Interlocal Agreement with the Operational Advisory Board, but would provide staff support to the Board. The Board's function is to provide an ongoing avenue for communication between the community, DSHS, and the SCTF staff. The Board may review and make recommendations to DSHS regarding security and operations of the SCTF, as described in RCW 71.09.320.

Again, we appreciate the efforts the City of Shoreline is making to provide for the siting of essential public facilities, including secure community transition facilities. Thank you for the opportunity to comment on the proposed designation and siting process for essential public facilities and your proposed regulations for secure community transition facilities. If you have any questions concerning our comments, please do not hesitate to contact me at (360) 902-8257, or Elaine Taylor, Land Use Administrator for Secure Community Transition Facilities, at (360) 902-8184.

Sincerely,



Beverly K. Wilson
Associate Superintendent for Community Programs
Special Commitment Center

Enclosure

c: Rachael Markle, City of Shoreline
Holly Gadbaw, DCTED

**ATTACHMENT F:
PLANNING
COMMISSION DRAFT
MINUTES – JULY 18,
2002**

CITY OF SHORELINE

**SHORELINE PLANNING COMMISSION
SUMMARY MINUTES OF REGULAR MEETING**

July 18, 2002
7:00 P.M.

Shoreline Conference Center
Board Room

PRESENT

Chair Doennebrink
Vice Chair Harris
Commissioner Gabbert
Commissioner Kuboi
Commissioner MacCully
Commissioner Piro
Commissioner Doering
Commissioner McClelland

STAFF PRESENT

Tim Stewart, Director, Planning & Development Services
Rachael Markle-Oleson, Senior Planner, Planning & Dev. Services
Lanie Curry, Planning Commission Clerk

ABSENT

Commissioner Sands

1. CALL TO ORDER

The regular meeting was called to order at 7:00 p.m. by Chair Doennebrink , who presided.

2. ROLL CALL

Upon roll call by the Commission Clerk, the following Commissioners were present: Chair Doennebrink, Vice Chair Harris, Commissioners Gabbert, Kuboi, MacCully, Piro, Doering and McClelland. Commissioner Sands was excused.

3. APPROVAL OF AGENDA

COMMISSIONER PIRO MOVED TO APPROVE THE AGENDA AS PROPOSED.
COMMISSIONER McCLELLAND SECONDED THE MOTION. MOTION CARRIED
UNANIMOUSLY.

4. APPROVAL OF MINUTES

There were no minutes available for the Commission's approval.

5. PUBLIC COMMENT

There was no one in the audience who desired to address the Commission during this portion of the meeting.

6. REPORTS OF COMMISSIONERS

Commissioner Piro provided each of the Commissioners with an e-mail he received regarding a series of brown bag lunch topics provided by the Washington Chapter of the Planning Association. This season the meetings will be held in Renton, and interested Commissioners should RSVP if they plan to attend.

Commissioner McClelland noted that Pat Sheffels, a Planning Commissioner from Bellevue, was recently elected to the American Planning Association (APA) National Board to fill the Public Official Director At Large position. She pointed out that the only public official on the APA National Board happens to be one of their own Chapter's members and a fellow Planning Commissioner. She said she is working with Ms. Sheffels to recruit planning commissioners to APA and to encourage them to attend the State Chapter Conference at SeaTac in September. She noted that on Sunday afternoon there will be a Planning Commission short course for new Commissioners. Immediately after the course, she and Ms. Sheffels are organizing a reception for Planning Commissioners. Within the next few weeks they will be sending out, through the Association of Washington Cities, an invitation that will be addressed to all of the Planning Directors and City Clerks in the State. They will be asked to deliver this invitation to their Planning Commissioners inviting them to sign up for the short course and attend the reception and other sessions of the conference. The Commission agreed to join Commissioner McClelland in signing the invitation she is drafting.

7. STAFF REPORTS

a. Staff Announcements

There were no staff announcements provided during this portion of the meeting.

b. Type L Public Hearing to Consider Amendments to the Development Code Regarding the Siting of Secure Community Transitional Facilities Pursuant to State Regulations

Ms. Markle briefly provided background on why this issue is before the Commission. Secure Community Transitional Facilities (SCTF's) are less restrictive housing for sexual predators who have served their criminal sentence and are civilly committed to a special commitment center (SCC) as an alternative housing option. She said that, historically in Washington, persons who were deemed by the courts to be sexual predators could be committed, after completing their criminal sentence at the McNeil Island Federal Penitentiary, to an SCC located on McNeil Island. However, in August of 1991, a civil

rights complaint was filed in Federal Court alleging violations of constitutional rights of those SCC residents. In 1994 a Federal District Court Judge entered an order of injunction requiring the SCC to provide the residents with constitutionally adequate mental health treatment. Since 1995, the State has been required to hold annual and semi-annual court hearings regarding their progress on meeting that court order. In 1999 the Federal Court ordered the State to pay \$50 per day per SCC resident for not making significant progress. The fines are now up to about \$4 million.

Ms. Markle explained that the court also ordered the State to make arrangements to transition those SCC residents that were qualified for conditional or unconditional release to a less restrictive housing alternative. In response to this court order, Governor Lock, in June of 2001, signed Substitute Senate Bill 6151, which was later amended by Bill 6594. The result of this bill is the subject of tonight's public hearing. She explained that the bill authorized the Department of Social and Health Services (DSHS) to construct and operate a 24-bed SCTF on McNeil Island. It also reformed the State sentencing structure for persons who commit serious sexual offenses. It established procedures that DSHS and local governments must follow to site additional SCTF's, and it provided for limited liability coverage for certain certified sex offender treatment providers meeting certain requirements. It also established legislation that assigned DSHS to work with local governments to find sites for SCTF's. In addition, the State also offered planning grants to local governments that were willing to initiate the process to locate an SCTF. They also created a GIS database to map what has been termed as the risk potential activities of these facilities throughout the State.

Ms. Markle further explained that DSHS was also assigned to develop study guidelines and criteria for SCTF's, and the guidelines were to stress equitable distribution. A great weight is given to siting SCTF's in a manner that will not cause a disproportionate grouping of similar facilities under one county or in one jurisdiction or community. The minimum State siting requirements mandate that DSHS must approve the local siting, and local plans and regulations may not preclude the siting of SCTF. The minimum size of these facilities is three beds and the minimum public safety requirements stated in the bill have to do with limiting the proximity of SCTF's to risk potential sites. They are not permitted adjacent to, immediately across the street or parking lot from, or within the line of sight of a risk potential activity or facility. The bill also gave some minimum requirements for the security of the site and stipulations related to the type of people who can live there.

Ms. Markle advised that King County is slated to receive 15 SCTF beds between the years of 2004 and 2007, and this brings the City to their role in the siting of these facilities. She, again, stated that the bill amended the Growth Management Act (GMA) to mandate that no local government comprehensive plan or development regulation may preclude the siting of a SCTF. The bill also put a deadline of September 1, 2002 for jurisdictions to make these changes to be in compliance with GMA.

Ms. Markle said the City staff analyzed three different alternatives. The first was whether or not to amend the Comprehensive Plan. Upon review of the Comprehensive Plan, the staff found that it was not out of compliance with the amended Growth Management Act because it defines essential public facilities and includes a process for identifying and siting essential public facilities. Although it does not specifically list SCTF's, it does not preclude them either. Therefore, staff does not recommend an amendment to the Comprehensive Plan at this time.

Ms. Markle advised that the second alternative that was analyzed by staff was the option of doing nothing and leaving the Development Code and Comprehensive Plan as written. While the Comprehensive would allow for the siting of an SCTF, the Development Code may actually preclude it. At this time, SCTF's are not listed as a use in the Development Code and there is no other use in the use table that is similar enough. Therefore, SCTF's are considered unlisted uses, and the City has criteria for unlisted uses. The applicant would apply for a code interpretation, which would be a Type A permit. The review and decision would be done by the Planning Director using the unlisted use criteria. If the director was to find that the SCTF was not a use permitted in any zone the City would be found out of compliance with GMA. If no changes are made to the City's Development Code, the City could end up being at risk for preemption by the State, and the State's siting and criteria would be used when siting an SCTF in Shoreline.

Ms. Markle said the third alternative staff considered was to amend the Development Code. The first amendment to the Development Code would add a definition for an SCTF. The proposed definition was taken straight from the State legislation. The second amendment was related to where SCTF's would be permitted. As proposed, an SCTF would be permitted in the regional business and industrial zones if it could meet the supplemental index criteria and the SCTF special use criteria, which is also proposed in the index criteria and is consistent with the DSHS siting criteria. She said staff analyzed whether or not allowing this use only in the regional business and industrial zones would preclude the siting, and they found that it would not.

Ms. Markle advised that the meat of the regulations are found in the index criteria, and the first would limit the size of the SCTF to three persons. She noted that is the minimum size allowed by the State. The second criteria would require a review of transportation related to the potential site for safety. The third index criteria would establish a buffer of 200 feet between the risk potential activities and facilities and the SCTF. Staff arrived at the proposed buffer after reviewing the GIS database of risk factors that was provided by the State. While the database has not been verified to be complete, a preliminary review indicates that there would be adequate potential to site SCTF's in industrial and regional business zones using the 200-foot buffer requirement.

Ms. Markle noted that after receiving public comment, some changes were suggested to the index criteria. One was to add risk potential facilities, and staff recommends that this change be made before the ordinance is approved. Another proposed change is to make the list of risk potential activities or facilities exactly match those used by the State. There were also some questions raised regarding the 200-foot buffer and the line of sight, which clearly deviate from the State requirements. Instead of having a specific buffer requirement, the State is using line of sight, which means that if there is a geographic difference or a large building that obscures the site, the buffer may be reduced. If changed, the 200 foot buffer would identify minimum distance. But using the line of sight requirements, the buffer may be even greater. She suggested that they add the term "200 feet or within line of sight as defined by the State, whichever provides the greatest protection."

Ms. Markle said the staff also added criteria that specifies additional application materials. She said the original proposal (draft Ordinance 309) referenced the submission of a detailed security plan. She said

that the State has suggested that it would not be appropriate for them to submit their security plans to the public. However, the City needs to have the ability to make a determination as to whether their residents will be safe. They need to be sure that their law enforcement agency can manage the facility. Staff suggests that the City enter into an interlocal agreement with DSHS agreeing to a security plan, and the State law allows the City to request this type of agreement.

Ms. Markle said the risk potential activities and facilities include public and private schools, school bus stops, licensed daycare and preschool facilities, public parks, publicly dedicated trails and sport fields, recreation and community centers, churches, synagogues, mosques and public libraries.

Ms. Markle advised that the final group of amendments relate to the process for reviewing an SCTF special use permit, which would be a quasi-judicial land use action. Staff realizes that is unusual to create a process for one specific use, but this is a very unique and unusual use. She said staff is suggesting that the siting of SCTF's be a quasi-judicial land use action that is reviewed and decided upon by the Hearing Examiner. Ms. Markle said the proposed review process would require notification through mailings to persons who own property within 500 feet, posting the site, and publishing in the newspaper. They received a good public comment suggesting that the mailings be sent out to residents and property owners living within a half-mile. This is what the State recommends, as well, so she encouraged the Commission to make that change.

Ms. Markle said it is important for the Commission to make a recommendation regarding Ordinance 309, as amended, now so that the City Council can take action on August 26 to meet the September 1 deadline. Finally, Ms. Markle reminded the Commission that the State ultimately has the ability to preempt any local regulations that are more restrictive than theirs. Some of the recommendations that have been suggested could be construed as being more restrictive.

Commissioner Piro inquired if there are any minimum site size requirements identified by the State mandate. Beverly Wilson, Associate Superintendent for Community Programs, DSHS, said that, as a rule of thumb, the size of the facility could be as much as ½ acre per person in order to meet the screening requirements, etc. For instance a 12-bed facility could need up to five acres. So a 3-bed facility would be about 1½ acre in size.

Commissioner Gabbert inquired why all of the beds cannot be grouped into one large facility instead of smaller facilities. Ms. Wilson said the State's mandate is that there not be any undue burden on any particular jurisdictions. For instance, Pierce County is done because they have the penitentiary and the 24-bed SCTF. Now each county is supposed to take some of the remaining need.

Commissioner Piro pointed out that if the State feels that the City is more stringent than the DSHS guidelines, they can preempt the City requirements. He questioned why they need to implement the additional Development Code regulations if the State regulations would apply in the end. He questioned if this is an attempt by the City to make a good faith effort to meet somewhere in the middle. Ms. Wilson answered that local jurisdictions have the right to develop a process for siting SCTF's, and DSHS is hopeful that not all of a local jurisdiction's regulations would be preempted. The proposed ordinance is the City's effort to meet in the middle, but she already knows of some items in the City's

proposed ordinance that are more restrictive than what the State would require. If an SCTF were to site in Shoreline, those particular requirements may not be followed because they are too restrictive.

Commissioner McClelland said it appears that the State feels their requirements are sufficient, yet the cities are sending a message back to the State saying they think they need tighter restrictions. The State will likely win in the end. She inquired what the City hopes to accomplish by risking a preemption. Ms. Markle said that the hope is that at least some of the requirements would not be preempted, and that they would be considered part of the process.

Commissioner McClelland suggested that this issue could place the City at odds with the community. While she is not saying they should be more restrictive than the State, if the City places more restrictive requirements on the use than the State, the State could preempt the more restrictive requirements and the Commission would have to answer to the community. She said that at some point, these requirements need to be tested.

Ms. Markle said one of the main issues of concern with the City's proposed requirements is that the 200-foot buffer requirement may be arbitrary. However, when applying the 200-foot buffer, it does not preclude the siting of a SCTF, and neither does the process. State law mandates that jurisdictions provide space for this use to locate within their boundaries.

Chair Doennebrink requested that staff identify where the available sites are located. Ms. Markle said she has a breakout of the acreage that would be available for this type of use. With the 200-foot buffer, there would be 153.8 acres available for this use. The regional business and industrial zones are located primarily on Aurora, but there is a small area in Ballinger and one on 15th Avenue. She distributed copies of three maps that identify the risk potential activities where SCTF's would not be allowed within 200 feet. She emphasized that the proposed ordinance would also only allow SCTF's to be placed in regional business and industrial zones.

Commissioner Kuboi inquired if the overall strategy of the proposed ordinance is to reduce the subjectivity of the process. He stated that if no action is taken, the current process would not preclude the siting of SCTF's in Shoreline. It just places the responsibility on the Planning Director to evaluate the compatibility issues. Ms. Markle advised that the risk of the State precluding the City's requirements would be less if the proposed ordinance is adopted to amend the Development Code.

Commissioner Piro inquired regarding what other jurisdictions are doing to meet the Growth Management mandate. Ms. Markle said the City's model started with a model from the City of Burien. Staff made a few changes as a result of a comment letter she received regarding Burien's regulations and to make the regulations more consistent with the State regulations. She said she talked to representatives from the City of Bellevue, and they are proposing to make SCTF's conditional uses in commercial zones and not allow them in any residential zones. Redmond is the same. Bellevue does not have the 200-foot buffer requirement from a risk potential activity. Their buffer is 300 feet from any residential use. If this was done in Shoreline, it would likely preclude siting any SCTF's since Shoreline is approximately 95 percent residential. To Ms. Markle's knowledge, Mountlake Terrace is not doing anything to change their regulations at this time.

Commissioner Doering noted that in Section B of the Policy Guidelines it states that the second step in the process would be perform a qualitative review of potential sites, as there may be other factors that are unique to the local area that local jurisdictions may want to consider. If so, the local jurisdictions should document what those factors are and the justification for their consideration. She said it sounds like there is some wiggle room if they can identify other potential risks. She inquired if there would be any consideration given for all of the other facilities of King County that Shoreline is housing right now. Ms. Markle said this does not apply to the other facilities such as Level II and III sex offender houses, but that the State will consider other DSHS and Department of Correction facilities located in a jurisdiction.

Commissioner McClelland recalled that when the Commission discussed this issue in a joint session with the City Council, the understanding was that the State was going to look at land they already owned first. And only then were they going to consider the purchase of additional land.

Chair Doennebrink reviewed the rules and procedures for the public hearing and then opened the hearing for public comment.

Beverly Wilson, Associate Superintendent for Community Programs at the Special Commitment Center, Department of Social and Health Services (DSHS), said that DSHS really appreciates the efforts of the City of Shoreline to do this planning, even though there are still some questions as to why they are doing the planning and what the results will be. She referred the Commission to the letter she provided prior to the meeting outlining some of her key issues with the proposed ordinance.

Ms. Wilson explained that State law defines line of sight as being able to reasonably and visually distinguish and recognize individuals, but it doesn't say what that distance should be. DSHS used a measuring tool and discovered that 600 feet is about the point of which you really lose the ability to recognize people, so the 200-foot buffer requirement proposed by the City should not be a problem at all. If they wanted to change it to 600 feet, DSHS would not argue with that, either.

Ms. Wilson said that there are very stringent requirements in the State law about siting and operating these facilities. Because of this criteria, it is a very expensive program. Staffing is one of the most expensive issues. A facility of six or fewer residents would require a one-to-one ratio of staff members and residents during normal waking hours. At night, a ratio of two awake staff per three residents is required. In addition, the law requires that each resident be escorted on a one-to-one basis whenever they leave the facility for any purpose for the duration of the trip. However, the court has the ability to specifically order otherwise for an individual resident. She described the various staff that make up the treatment team for each of the residents, and how the courts impose numerous things the residents have to abide by. There is a lot of security, and the criteria mandated by the State cannot be changed.

Ms. Wilson said she is unclear about the City's concerns related to transportation. DSHS provides all of the transportation for the residents. They escort the residents on a one-to-one basis. The model that is used for these facilities establishes a very close working relationship with local law enforcement agencies, as well as those in the surrounding communities. One weekly trip is allowed per resident, but

these must be reviewed and approved in advance, and the law enforcement agencies will know exactly where the residents will be going.

Ms. Wilson said that equitable distribution is part of the State mandate, and directs both cities, counties and DSHS to consider equitable distribution factors. These are listed as mental health hospitals, Department of Corrections prisons, or other correctional facilities. The location and numbers of Level II and III sites located within each community must be limited so as not to place an undue burden on any one community. She said that over the past year, the legislature did include provisions to allow counties to go together to construct a regional facility. They are also very clear, from their communications with legislative staff, that economy and scale is very important.

Ms. Wilson said it would be serendipitous if the State happened on a perfect piece of property for a facility that was already State owned. The chances of that are quite unlikely because of issues such as equitable distribution requirements. There isn't a lot of State land available in the King County area.

Ms. Wilson said the proposed code would limit a SCTF to no more than three beds. As required by the State, DSHS has projected a need for a minimum of five beds to a maximum of fifteen beds in King County between now and 2007. They are planning to site one, twelve-bed facility somewhere in King County, and it will likely be built on one piece of property. Ms. Wilson said that despite the equitable distribution requirements in the law, DSHS believes that the legislature gave them the decision-making authority to determine the adequacy of a site for an SCTF. Because of the statutory requirements for intensive supervision, as well as security measures and programming, siting several very small facilities in King County would be cost prohibitive. Both a three-bed model and a twelve-bed model are expensive. But a twelve-bed model does offer some economy. They have calculated the capital and operating costs for both and found that operating four, three-bed facilities would increase the annual cost by \$1.3 million. That's a 31 percent increase over the \$3 million it would cost to operate one, twelve-bed facility. The capital costs would experience a 45 percent increase. DSHS is asking all of the cities to remove this requirement. She said she understands why the City feels it would be in their favor to have the smaller facility. However, as taxpayers of the State, this is not the most cost effective approach.

Ms. Wilson said that DSHS is baffled about the requirement to provide on-site dining, laundry and recreation services. She explained that this is a residential program, and they need these services in their facility so they can help train people with the skills they will need in the future. Therefore, this requirement is a mute point.

Ms. Wilson said that DSHS appreciates the understanding of the local jurisdictions regarding the need for confidential security plans. They expect to have a very close partnership with the local law enforcement agencies, local governments and the community to address security issues. However, they don't want to openly publicize the security plans as part of a community record. The City suggests, in their proposal, that the long-term agreement would need to be approved as a condition for the permit. DSHS understands that both sides need to trust that they have come to some kind of agreement, but DSHS would be concerned if the agreement were to become a means by which a community could preclude the siting of this type of facility. DSHS suggests some type of language that would require DSHS to provide a commitment in writing that would become a condition for the permit.

Rob Garwood, 155 Northwest 183rd Street, said he is a Senior Planner with the City of Bothell. He distributed excerpts from the City of Bothell's proposed code changes, which have gone before the Planning Commission for one review, and the second review should take place next week. He suggested that it would be useful to include the term "600 feet" as part of the line of sight definition. He also suggested that it be added to the language regarding the siting of a SCTF. Mr. Garwood suggested that they should add some language in the zoning code to reflect the line of sight requirements, as well.

Mr. Garwood inquired when the staff sent their proposed regulations to CTED. Ms. Markle answered that they were sent in plenty of time to meet the 60-day requirement. Mr. Garwood noted that DSHS has indicated that October 1 is the final deadline for this document to be approved.

Mr. Garwood said he realizes that no one wants this ordinance to be passed, and no one wants one of these facilities near their home or in their jurisdiction. However, he appreciates the fact that the Commission and staff is doing this work. Lastly, Mr. Garwood suggested that the Commission contact the State legislature and tell them that not only do they not appreciate having to site these facilities, but that part of the problem is that the sentencing requirements are too light for these kinds of crimes. He advised that tomorrow a bunch of north end cities will meet to discuss the SCTF issue with a representative from Carolyn Edmonds' office.

Commissioner Gabbert inquired if the counties that have the most people going to prison have to accept a higher number of SCTF's. Ms. Wilson responded that equitable distribution has caused a lot of confusion, but the legislature made it real clear that counties need to be ready to take their share of the people out of the correctional system. It also states that all of the cities should work together to determine the appropriate siting for these facilities, with equitable distribution. It is not prohibitive to site these facilities next to prisons, but it states that great weight should be given to these factors.

Commissioner Kuboi clarified that Ms. Wilson is saying that counties need to have an equitable portion of these facilities and then the counties are supposed to make sure each jurisdiction has its fair share. Ms. Wilson explained that the law directed DSHS to make a projection for how many additional beds would be required through 2007 and then to notify the counties of that number. They reached their estimate of additional beds required per county by looking at how many individuals had been civilly committed from each county as of April 1, 2001. King County had 41 of the 138 total number of individuals who had been civilly committed, which is about 30 percent. The fifteen-bed requirement that was placed on King County is about 30 percent of the total number of beds that DSHS has projected will be needed. There were a lot of counties that didn't have anybody civilly committed, so their numbers were zero. A number of counties, who had a low number of civilly committed individuals, were assigned one, three-bed facility, which is the minimum size of facility that the law allows.

Chair Doennebrink summarized that when DSHS comes to a community with a request to site a SCTF, it is really between DSHS and the jurisdiction involved. The County does not act as a referee. Ms. Wilson agreed with Chair Doennebrink's summary. She said that DSHS will try to site a SCTF in a jurisdiction in the very near future. She said the court has said that the constitution provides a means by which the State can civilly commit people, but it does not provide a means to literally lock these people up and

throw away the key. The conditions of confinement have to provide the option for a light at the end of the tunnel for people who make progress in treatment and show they can be adequately managed in the community. Not every resident will get out, but some will.

Ms. Wilson said that as they look for sites in King County, one of the major considerations will be the proximity and location to risk potential facilities. The law gives great weight to choosing sites that are the farthest removed from risk potential locations.

Commissioner Doering said that since the number of SCTF's that each county is required to provide space for is determined by the number of cases that that were tried within that county, King County ends up with a higher number because they provide more services. Ms. Wilson said the number depends upon which superior court an individual was convicted in. This is not really a true indication of where the criminals come from. Oftentimes, people who commit crimes in King County actually live in another county. But there are King County residents who commit crimes in other counties, as well.

Commissioner Doering said that in reading the material from DSHS, it appears that this is a new type of program, and that there are not many others around the country. Ms. Wilson said Washington's civil commitment law was the first to be approved in the nation. Other states are learning from Washington State. There are now about 15 other states that have similar programs. She said that Arizona has succeeded in siting a 30-bed SCTF in downtown Phoenix. Other than two residents who absconded and went to Mexico, they have not had any serious problems. And they don't have near the supervision and security requirements that the State of Washington has.

Commissioner Doering said there hasn't been a lot of trust and accountability present with DSHS programs. She said she has a difficult time being convinced that a larger site would be better than several smaller sites. Ms. Wilson said it is not a matter of one being safer than the other because both sizes would have the same level of security and supervision. If anything, a larger facility would have more people watching the residents. She said DSHS cannot guarantee that nothing bad will ever happen, but they have so many different back up systems and security is a priority for local law enforcement officials, as well. Commissioner Doering inquired if DSHS provides training programs for local law enforcement agencies. Ms. Wilson answered that training of local law enforcement agencies is part of the mitigation agreement. In addition, the staff at the facility have to go through a month-long training program.

Chair Doennebrink inquired about staffing for larger facilities compared to those that are small. Ms. Wilson said the law is specific that if the facility has six or fewer beds, there must be a one-to-one ratio. That is one of the reason that smaller facilities are more expensive to operate. She explained that when residents leave the facility to go to treatment programs or jobs, etc., they have to be accompanied at all times by a staff member. The intent is to provide treatment for these individuals and attempt to transition them back into society as they show their trustworthiness over the long term. She said that studies have shown that the recidivism rate is about 25 percent for sex offenders as a whole. However, sex offenders who receive supervision while going through treatment programs, the rate is much lower at 8 to 10 percent. Studies show that the key is random supervision.

Commissioner Piro referred to the letter from Ms. Wilson which lists several points in the proposed amendment that she takes issue with. He asked that she prioritize those points that she would really encourage the Commission to consider. He questioned if she sees anything in the proposed amendment that could be considered as a fatal flaw.

COMMISSIONER GABBERT MOVED TO EXTEND THE MEETING TO 9:30 P.M.
COMMISSIONER DOERING SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

Ms. Wilson answered that the size of the facility is an important factor. If every jurisdiction were to adopt a size limitation of no more than three beds, DSHS would have to challenge the requirement. If they are forced out of being able to locate these facilities because of cost issues, they will not be able to meet the court mandate. The proposed amendment has addressed her issue of land sizing, but they could adopt her suggestion. There were also some minor corrections recommended in the equitable distribution section. It also looks like the proposed amendment takes care of her concern regarding the security plan requirements. She said they are looking for things in the process that would impede DSHS's ability to site a facility in local jurisdictions.

Commissioner Piro said Mr. Garwood provides information that reflects some changes and amendments that the Bothell Planning Commission took into consideration. He inquired if there are any of these points that he would encourage the Commission to consider. Mr. Garwood said the language referencing line of sight should be added to the zoning code as an indication of a condition. The more specific the City gets in taking language straight out of the State law, the better off they will be because it will be in their code, too.

Commissioner McClelland said she is so troubled by this proposal. She said she feels it is bad public policy, and she is offended that elected and appointed officials and staff people in the State are having to act like this is a good thing. McNiel Island is a perfect example of an isolated place where these facilities can be placed safely. There is public land in the State that is so remote that these people can be isolated and kept from incurring the kinds of risks that the public would be forced to protect themselves from. They are being asked to suspend common sense in order to meet the equitable distribution requirements. She said that when this issue first came before them they were told that this would be ultra-maximum security prison for three to fifteen men who, if let loose, would rape and murder women and children. Her impression was that they are so vicious and violent that they can never be released. But the image that is being portrayed now is a house for these people. These people will be living integrated lives, with the hope of rehabilitation.

Ms. Wilson said this is not a situation of total confinement, and it cannot ever become such. She said that there are numerous sex offenders already in the community—even some of the highest level offenders. These people are out in the community because they were not civilly committed after they completed their prison term. There are many other dangerous people living in the community who are without any supervision. The community is far safer having this group living in their community than the others that are not supervised. In the last two court hearings that were held on this issue, the two judges have encouraged DSHS to start with McNiel, but look for sites on the mainland, as well. If they don't succeed, all 168 people in this program could be set free.

Commissioner McClelland said that no matter what safeguards and security systems are in place, there is no guarantee that the system will be fail proof. Ms. Wilson agreed. There is no guarantee. However, the legislature felt that the public did not want to lose the civil commitment program because it provides security for the communities. They have set up as many security measures as possible to make this palatable and possible in communities.

It was pointed out that it costs about \$970 per day per inmate to run the SCTF program. Commissioner McClelland expressed her opinion that there are so many other things that this money could be used for such as research to cure diseases.

Commissioner MacCully said his understanding is that the State has put legislation in effect in response to a judge's order. Ms. Wilson answered affirmatively, and added that the judge's order is based on constitutional law and not just a personal whim. Commissioner MacCully said some of his frustration on this issue goes back to his lack of understanding regarding the distribution of people between counties and cities. He questioned what King County's role is. Ms. Wilson explained that the new legislation is a result of local jurisdictions' resistance to DSHS's attempts to site these facilities and their desire to have input in the siting of these facilities.

Commissioner MacCully said there has been some discussion about facilities that are located in remote instead of urban areas. He said most of the correctional facilities he is aware of tend to be located in remote areas—some even on islands. Placing these facilities in remote areas goes a long way towards easing people's fears about having these people, regardless of what the recidivism rate is, living in their communities. He said that Shoreline does not have any remote locations, while King County as a whole, has a number of these sites. While he understands that it will be expensive to site a facility, when they are talking about an operating cost of at least \$250,000 per person, per year, a remote facility may make more sense if it can allay the public's fears and concerns.

Ms. Wilson said she does not disagree. The issue is what would be considered too remote. One thing to consider is the ability for law enforcement to respond if a problem occurs. There are also medical emergencies, staff emergencies, etc. that need to be considered. All of the jurisdictions in King County are doing this exercise together, and it does not mean that DSHS has eyes on Shoreline for a facility. They will look for those sites that strike a balance by being more removed, yet close enough to accomplish the program and safety requirements.

Commissioner MacCully asked what would happen in the event that one of the civilly committed residents were to escape and commit a significant crime. Who would have the liability associated with that happening? Ms. Wilson said that in the legislation that was approved this past year, local jurisdictions were granted immunity from liability of civil causes of action and damages for anything to do with the siting of an SCTF. A local jurisdiction's law enforcement officers would also be immune.

Commissioner Gabbert pointed out that Shoreline already has a DSHS facility in Fircrest, which houses a correctional program. They also have residents there that could be considered high level offenders. He asked if this would be considered when calculating equitable distribution. Ms. Wilson answered that it

would not. However, DSHS would look for properties that are not close to places where there are a lot of vulnerable people. In addition to meeting all of the siting requirements, DSHS will use their best judgment to maximize the public safety.

Commissioner Kuboi inquired if DSHS is in a position to determine Shoreline's share of the distribution. Ms. Wilson answered negatively. She said if DSHS decided to try and place a facility in Shoreline, they would approach the City to find out important information that should be considered. They will also hold public meetings to allow the public to participate in the process.

Commissioner Kuboi inquired if Ms. Wilson is aware of any civil actions or lawsuits involving "takings" when a property owner's property value is decreased because an SCTF is located nearby. Ms. Wilson said she does not personally know of any situations of this type.

Commissioner Kuboi said he is still unclear about the line of sight concept. He asked Ms. Wilson to explain how this relates to whether there are obstructions in the way. Ms. Wilson said the law states that the "within the line of sight" means being reasonably able to visually recognize and distinguish individuals. So if there is an obstruction in the way, the 600-foot requirement would not apply. Again, she said the law gives great weight to finding sites that are the furthest removed from risk potential properties. Commissioner Kuboi said he is not clear on the purpose of the line of sight requirement. Ms. Wilson said "line of sight" is a term used in the State law. Some of the reasons for having these requirements is that the community does not want to be able to see the residents in the SCTF. It is also important that the residents are not able to see people in facilities such as schools, etc.

Chair Doennebrink asked what the minimum distance must be between an SCTF and an adjacent facility. Ms. Wilson explained that the law lists certain types of facilities that SCTF's cannot be located adjacent to. Then it lists the types of facilities that cannot be within the line of sight of the SCTF. She stated that an SCTF would have to meet all of the zoning requirements.

Commissioner Gabbert asked Mr. Garwood how long the Bothell Planning Commission deliberated before recommending approval of the new ordinance. Mr. Garwood answered they have not made a recommendation yet. He said they have held one meeting, and changes were made to the proposed ordinance based on comments from the Planning Commission. He said they were initially given a map illustrating 600 feet from bus stops and risk potential activities and facilities, and this pretty well isolated one business park in the City where this use could occur. They asked staff to prepare an additional map identifying all those sites that are within 300 feet and 600 feet of a residential zone. They also wanted them to figure out how many acres of developable property that is located within the business park would be left over. It went from 90 acres down to 37 acres of undeveloped land that would be available for this use. He said the Bothell Planning Commission does not anticipate that this issue will be resolved until September.

Chair Doennebrink noted that Mr. Garwood has indicated that there would be a grace period for the September 1 deadline, giving jurisdictions until October 1 to complete their ordinance. He inquired if this would change the City's timeline at all. Ms. Markle answered that September 1 is the Growth Management Act deadline, and that is why the staff is pushing to get the ordinance adopted by that date.

However, other literature she has read indicates that October 1, 2002 is the deadline for which the State could preempt local regulations. Because the Commission takes August off, it would be difficult to get something done even by October 1 if they don't act upon it in July or August.

Chair Doennebrink inquired if it would be possible for the City to prohibit SCTF's within 300 feet of a residential zone. Ms. Markle said the staff did not actually produce a map using this scenario, but using the map found in the Development Code, it is clear that nearly every zone is surrounded by residential zones. They have applied a 400-foot buffer from residential zones for adult uses, and it is very hard to find available land for this use.

Commissioner McClelland suggested that the Commission recommend the amendment to the City Council for consideration as amended. They could attach the Commission minutes so that the Commissioner's concerns are clear. The City Council could decide whether or not to take the risk of not meeting the September 1 deadline. If the City Council desires, Chair Doennebrink could provide a presentation on behalf of the Planning Commission.

The Commission agreed that they should go forward with a recommendation to the City Council after making some recommendations and suggestions for change. Mr. Stewart said staff recommends that no changes be made by the Commission, and that the ordinance be forwarded to the City Council as proposed by staff, with the changes as suggested by Ms. Markle. He said they should also ask the City Attorney to further review the comments and information provided during the hearing and then attach them as a supplement to the staff report that goes before the City Council.

Commissioner Gabbert suggested that the Commission consider amending the staff proposal to include a 600-foot line of sight requirement.

THE PUBLIC PORTION OF THE HEARING WAS CLOSED.

COMMISSIONER GABBERT MOVED TO ACCEPT THE RECOMMENDATION FROM STAFF ON THE PROPOSED AMENDMENTS TO THE DEVELOPMENT CODE WITH THE CHANGES AS NOTED IN THE STAFF REPORT, AND WITH CLARIFICATION OF 600 FEET IN REGARDS TO THE DISTANCE FROM RISK POTENTIAL ACTIVITIES AND FACILITIES AND THE ADDITION OF A DEFINITION FOR LINE OF SIGHT. COMMISSIONER PIRO SECONDED THE MOTION.

The Commission agreed to extend the meeting to no later than 9:45 p.m.

Commissioner Gabbert said that, unfortunately, the City has to adopt some type of ordinance to address the Growth Management Act mandate. He said he supports the criteria that limits the size of the facility and increases the sight distance. He said he also likes some of the language that is in the City of Bothell's ordinance.

Commissioner Piro said he also has concerns about raising the number of beds that would be allowed in an SCTF within the City. He said he supports the idea of keeping the facilities small, even if it means having multiple facilities in King County. He felt that a maximum of five beds would be appropriate.

Commissioner Piro referred to Ms. Wilson's statement that DSHS is not typically a party to interlocal agreements since they are not a local government entity. He agreed that perhaps they should change this to a more typical type of agreement, such as a memorandum of understanding. Ms. Markle suggested that this issue could be resolved by removing the reference to the Advisory Board.

Commissioner Piro recommended that the Commission have the City Attorney review the information that was presented by both of the public testifiers. Mr. Stewart said the analysis by the City Attorney would be part of the record for the City Council's consideration.

Commissioner Doering inquired if it would be prudent to put transit-oriented development as one of the items on the list of risk potential areas. Mr. Stewart said that one of the constraints is that the risk potential items are defined by the State law. The further fowl they get of State law, the greater the probability of being preempted.

Commissioner Doering inquired if granting the Hearing Examiner public hearing authority would abdicate the community's input by allowing an outside authority to make decisions for the community. Mr. Stewart said staff has debated this issue extensively. Staff selected the Hearing Examiner based on his training, skills and ability to conduct a quasi-judicial hearing of this nature. He noted that this issue was also debated extensively during the adoption of the Development Code. The Commission has the ability to include this in their recommendation to the Council, but staff would continue to recommend that it be a Hearing Examiner decision.

Commissioner Gabbert felt that it would be more appropriate for the City Council to make these decisions, providing an opportunity for community input. Commissioner Doering agreed. She said that since this is a significant community concern, the community leaders should make the decision. Mr. Stewart said that if the Commission wants the City Council to make the decision, the Planning Commission would be responsible for holding a public hearing and making a recommendation to the City Council. It is certainly possible for the Commission to make this change prior to sending the amendment to the Council.

COMMISSIONER GABBERT MOVED TO AMEND THE MOTION TO ALLOW THE CITY COUNCIL TO MAKE DECISIONS RELATED TO SCTF'S AS DISCUSSED BY THE COMMISSION AND STAFF. COMMISSIONER PIRO, THE SECONDER OF THE MOTION ACCEPTED THE AMENDMENT.

Commissioner McClelland inquired if senior citizen facilities would also be identified as facilities of potential risk. She noted that this particular use is not identified on the State's list of areas of potential risks. Mr. Stewart said staff anticipates that whatever happens will probably be the result of litigation of some form or other. The more criteria or standards that are added that exceed the State standards, the greater the probability that the ordinance could be preempted. It is important that they not create criteria

that limits the sites so significantly that it is not be practical to build a facility in Shoreline. Using the criteria proposed by staff, over 100 acres would be available for this type of facility in Shoreline. Staff feels this is adequate.

Commissioner Kuboi inquired if the City Attorney have reviewed the proposed criteria that would limit the size of the facility to three beds. Mr. Stewart answered affirmatively.

BOTH MOTIONS CARRIED UNANIMOUSLY.

If all 39 cities in the County have to provide an ordinance similar to the one that the Commission just considered, Commissioner McClelland noted that theoretically they would be providing space for 120 people. She inquired if the City could rescind their ordinance once the facilities are sited. Mr. Stewart explained that as more of these individuals are released from custody, there will be a greater demand for facilities. He said it would not likely be possible for the City to rescind their ordinance.

8. UNFINISHED BUSINESS

There was no unfinished business scheduled on the agenda.

9. NEW BUSINESS

There was no new business scheduled on the agenda.

10. AGENDA FOR NEXT MEETING

The Commission reviewed that the next meeting would be held on July 25, 2002 at 7:00 p.m. The Commission would be meeting jointly with the Parks Board to review the Gateway Master Plan.

Commissioners Kuboi and MacCully were excused from the meeting of July 25.

11. ADJOURNMENT

The meeting was adjourned at 9:45 p.m.

Brian Doennebrink
Chair, Planning Commission

Lanie Curry
Clerk, Planning Commission

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