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June 17, 2009

Jennifer Ward, Land Use Administration Supervisor
Pubic Works Department
747 Market Street, Room 345
Tacoma, WA 9840293769

Re: The Point at Northshore DSEIS
SEPA Project File 2007040000089066

Dear Ms. Ward,

Please accept the following comments regarding the above DSEIS on behalf of our client SAVE NE TACOMA.

I. The List of Required Approvals and Certifications is Incomplete.

The List of Required Approvals and Certifications set forth at page iii of the of the Fact Sheet in the above DSEIS is incomplete. The list fails to include a necessary modification of the Plat of Division II of North Shore Country Club Estates to eliminate the requirement, as first established by the Hearing Examiner in his recommendation of approval of the preliminary plat of Division IIA, that the golf course remain as open space in perpetuity. Similar applications are also necessary to modify like conditions in other North Shore plats. No such applications have been made.

The Examiner's 1981 recommendation regarding approval of the Division IIA preliminary plat (File 125.238) was that the requested plat should be approved, subject to conditions. Approval condition 4.E provides as follows:

“The applicant shall submit a legal agreement, which is binding on all parties and which may be enforced by the City of Tacoma. It should provide that the property in question will maintain and always have the use of the adjacent golf course for its open

space and density requirement which has been relied upon by the applicant in securing approval of this request. . . (t)he Examiner believes that there must be more certainty provided to insure the golf course use, which was relied upon to gain the density for this request, is clearly tied to applicant's proposed use in perpetuity."

We recognize that the Applicant has submitted applications to modify the PRD approval and site plan in an effort to avoid this requirement. However, the plat of North Shore County Club Estates Division IIA was separately and independently approved with the condition that the golf course remain as open space in perpetuity. This condition was incorporated by the City Council in it's approval of the Hearing Examiner's recommendations, as evidenced in Resolution 26883 dated March 24, 1981.

The preliminary plat of Division IIA was subsequently expanded in 1985 to include all of Division II and was further modified in 1986 and 1988. On each occasion, the perpetual open space approval condition was carried forward and in some cases further strengthened. The following revised language was included as a condition of approval in the 1985 plat modification after questions arose concerning the continuing enforceability of the Open Space Taxation Agreement which was one of the means by which the City's open space approval condition was implemented. The revised condition language is also repeated at Note 17 of the Division II final plat which was recorded on March 24, 1994 under Recording Number 9403240358:

17) PRIOR TO THE ISSUANCE OF ANY BUILDING PERMITS, THE CONCOMITANT ZONING AGREEMENT HERETOFORE ISSUED IN CONJUNCTION WITH (THE ORIGINAL 1981 APPROVALS) SHALL BE MODIFIED TO ENCOMPASS THE REQUIREMENTS (THE ORIGINAL APPROVALS) AND AN OPINION OF THE CITY ATTORNEY OBTAINED THAT THE "OPEN SPACE TAXATION AGREEMENT" ENTERED INTO ON THE 10TH DAY OF MAY, 1979, BY AND BETWEEN THE CITY OF TACOMA AND NORTH SHORE GOLF ASSOCIATES, INC., IS VALID AND LEGAL, IS ENFORCEABLE, EXECUTED BY THE PROPER PARTIES, CONSISTENT WITH CONDITION 4.E OF THE EXAMINER'S REPORT OF MARCH 2, 1981, AND THAT THE AGREEMENT COMPLIES WITH THE REQUIREMENTS OF SECTION 13.06.245, TACOMA CITY ORDINANCES, RELATIVE TO OPEN SPACE REQUIREMENTS. THE FOREGOING SHALL BE NECESSARY TO ASSURE THE CONTINUED AVAILABILITY OF THE GOLF COURSE FOR OPEN SPACE DENSITY REQUIREMENTS IN PERPETUITY. THE PLANNING DEPARTMENT HAS CONCURRED IN THE FOREGOING CONDITION.

The applications submitted by Northshore Investors were deemed by the Hearing Examiner to be complete. That, however, is a different question than whether all applications

necessary for the redevelopment of the golf course were made. No application has been made to modify any of the plats. Even if the applications submitted by Northshore Investors are approved, the conditions of the plat approvals will remain in place and preclude any redevelopment of the course without the applicant and City first complying with the requirements of RCW 58.17.215 which provides in pertinent part as follows:

When any person is interested in the alteration of any subdivision . . . that person shall submit an application . . . The application shall contain the signatures of the majority of those persons having an ownership in the lots . . . in the subject subdivision . . . to be altered. If the subdivision is subject to restrictive covenants which were filed at the time of approval of the subdivision, and the application for alteration would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration . . .

Because the subdivision is subject to a covenant which was filed at the time of subdivision approval, the consent of all of the owners of lots within Division II is required as a precondition to any consideration of the removal of the perpetual open space plat approval condition. In excess of 88% of the owners within Division II have already confirmed to the City in writing that they will never consent to such a plat modification.

Compliance with this state law requirement is not discretionary. The City may not waive or otherwise ignore this mandatory requirement. Given this barrier to redevelopment, it makes no sense for the City to expend additional time and effort processing this application. All further efforts, including the required hearing before the Examiner, should be stayed unless and until the applicant can demonstrate compliance with RCW 58.17.215.

II. The DSEIS Analysis of Open Space is Inadequate and Incomplete.

The DSEIS makes alternative calculations, based on varying definitions, of the amount of open space required under the PRD regulations in place on the date of application. The calculation based on an assumption that private yards are “developed and maintained as usable landscaped recreation areas” and can therefore be utilized to meet the requirement that 1/3 of the PRD acreage be set aside as open space is preposterous and nonsensical.

Regardless, both calculations assume that the entire golf course acreage is attributable to the PRD and include the total golf course acreage in making these calculations. As more fully explained elsewhere herein, North Shore Country Club Estates (as distinct from the PRD) clearly includes Division I. The open space calculations ignore the history of the development of North Shore and greatly overstate the amount of open space available to satisfy the PRD open space requirements.

The North Shore development, including an 18 hole golf course, was announced by the original developer in 1956. A copy of an article from the News Tribune covering the announcement of the development is included with this letter. Lots sales (in the form of 99 year leases) in Division I commenced in or about 1960. The lot plan for Division I and some of the promotional materials regarding the “country club” development are also enclosed. At least the first nine holes of the course were developed and available for play decades in advance of the PRD approval (for the remaining divisions) in 1981. Division I is clearly part of the North Shore Country Club but has never been part of the PRD.

The legal status of the leased lots was eventually decided by the State Supreme Court. The leased lots were replatted in 1979 (using the same lot lines) to remove any doubts about their legal status. The remaining 9 holes of the golf course, while long promised, were finally completed at about this time—a date several years in advance of the approval of the PRD for the successive divisions of the development.

To apply the entire golf course acreage to satisfy the PRD’s open space requirements ignores the existence and historic link between Division I and at least the first nine holes of the course. In calculating required open space for the PRD, either the first nine holes of the course should be excluded or all of Division I should be included. Any other approach greatly overstates the amount of open space attributable to the PRD.

The DSEIS should address the consistency of the alternative definitions of open space with the language of the various Examiners and City Council that the perpetual existence of the golf course is necessary to satisfy open space requirements. If anyone at that time thought that private yards could be used to satisfy the requirement, then both the language of the code and the language of the approval conditions were superfluous and unnecessary.

The DSEIS should also address the rights of the Division I owners who bought their homes in reliance on the purchase agreements with and representations of the original developers in and to the golf course/open space. The enclosed 1958 Earnest Money Receipt and Application to Lease makes clear that obtaining a 99 year lease was tied to and conditioned upon acceptance by the lessee as a member of the golf club.

III. The DSEIS is Inadequate in that it Fails to Include Any Discussion or Analysis of the Net Change in Greenhouse Gas (“GHG”) Emissions Resulting from the Removal of the GHG “Sink” and Redevelopment of the Site into an Auto Dependent Residential Development.

The Northshore SEIS is deficient because it fails to address global climate change and greenhouse gas (“GHG”) issues. Jay Manning, Director of the Washington Department of Ecology, has informed local governments that existing State Environmental Policy Act (SEPA) authority should be used to require the evaluation of climate change and GHG impacts. The

SEIS should be revised so as to analyze and fully disclose the net change in and the potential impacts related to the project's greenhouse gas emissions.

The SEIS should include a description of recent legislation and executive orders in Tacoma and Washington state, mandating long-term reductions in GHG emissions. It should describe the City of Tacoma Resolution No. 36835, mandating GHG emission reductions for future community development in the City. The SEIS should also describe the City of Tacoma's Climate Action Plan, dated July 1, 2008, focusing on those elements relevant to reducing GHG emissions from new residential developments.

A discussion of the consistency between the proposal and the above policies and mandates should also be included. If the net change in GHG emissions is found to be inconsistent with such policy directives and mandated reductions, then such increase and inconsistency, and the attendant contribution to climate change and the results thereof, should be identified as an unavoidable significant adverse impact of the proposal.

IV. The DSEIS is Inadequate in that it Fails to Properly Address the Consistency (or Lack Thereof) of the Development Proposal with the City's Comprehensive Plan Policies and With the Requirements of the Original City Approvals.

Section 3.1 of the DSEIS contains a limited analysis of the consistency of the proposed development with adjacent land uses. The document includes a comparison of such items as lot sizes, densities and setbacks between the existing and proposed developments. Comp plan policies regarding in-fill development are offered on pages 3.1-3 and 4 in apparent support of the application. The discussion is silent, however, with respect to competing policies dictating the preservation of scarce open space and recreation opportunities (LU-RDG-3 and 5, E-ENF-1, E-ROS-3 and 4, E-SA-5, ROS-G-1, 3, 4 and 6, ROS-AC-1, 2, 8, 9, 10 and 13. Further, given the documented paucity of open space and recreational opportunities in NE Tacoma, the lack of consistency between the proposal and the need for increasing open space and recreational opportunities should be addressed. A discussion of the proposal's consistency with the Northeast Tacoma Neighborhood Area Vision should also be included.

The City of Tacoma is a Leadership Member of the Cascade Land Conservancy. As such, it is one of the chief proponents of the Cascade Agenda. The Cascade Agenda sets forth a blue print for smart growth while preserving open space in both rural and urban settings. The redevelopment of scarce urban space with auto dependent housing and without high capacity transit opportunities is exact antithesis of smart growth and the Cascade Agenda. The DSEIS should include a discussion of the consistency of this development with the City's role as a Leadership Member of the Conservancy and with the Cascade Agenda.

While the lack of a full policy consistency analysis is surprising, the lack of any substantive discussion of the consistency of this proposal with the original PRD approval

conditions and with the requirements of Tacoma's PRD regulations is shocking. TMC 13.04.140(B)(3)(d) requires a finding of compliance of the site development plan with any conditions to development stipulated by the City Council at the time of the establishment of the PRD District. The application also requires a statement from the proponent explaining how the requested modification is consistent with the original approval conditions. The DSEIS should include an analysis of such compliance, or the lack thereof.

Rather than including a complete consistency analysis, the DSEIS instead appears to erroneously assume that the applicant is entitled to approval if it can show that adequate open space will remain post development. The following statement from page 3.1-6 is illustrative:

“Modification of the PRD rezone and development of the golf course property should only be permitted to the extent it is demonstrated that the proposed open space meets both of these open space functions and requirements.”

This statement reflects an erroneous assumption that the history and express language of the approval conditions no longer matter. If, the document appears to say, open space functions and requirements can be met, then the history and approval conditions are no longer relevant. That any modification should be considered does violence to the express language of the Hearing Examiner's conditions of approval, as adopted by the City Council, that there be “certainty provided to insure the golf course use, which was relied upon to gain the density for this request, is clearly tied to the applicant's proposed use in perpetuity.”

This language was a condition of approval for three separate applications: the original PRD, the site plan and the preliminary plat of Division IIA. As indicated above, the language of this approval condition was subsequently amended when the preliminary plat was modified in 1985 after concerns were voiced regarding the enforceability of the Open Space Taxation Agreement. The revised language, which was carried forward through subsequent modifications and which is listed as Note 17 on the final recorded plat of North Shore Country Club Estates Division II, bears repeating:

17) PRIOR TO THE ISSUANCE OF ANY BUILDING PERMITS, THE CONCOMITANT ZONING AGREEMENT HERETOFORE ISSUED IN CONJUNCTION WITH (THE ORIGINAL 1981 APPROVALS) SHALL BE MODIFIED TO ENCOMPASS THE REQUIREMENTS (THE ORIGINAL APPROVALS) AND AN OPINION OF THE CITY ATTORNEY OBTAINED THAT THE "OPEN SPACE TAXATION AGREEMENT" ENTERED INTO ON THE 10TH DAY OF MAY, 1979, BY AND BETWEEN THE CITY OF TACOMA AND NORTH SHORE GOLF ASSOCIATES, INC., IS VALID AND LEGAL, IS ENFORCEABLE, EXECUTED BY THE PROPER PARTIES, CONSISTENT WITH CONDITION 4.E OF THE EXAMINER'S REPORT OF MARCH 2, 1981, AND

THAT THE AGREEMENT COMPLIES WITH THE REQUIREMENTS OF SECTION 13.06.245, TACOMA CITY ORDINANCES, RELATIVE TO OPEN SPACE REQUIREMENTS. THE FOREGOING SHALL BE NECESSARY TO ASSURE THE CONTINUED AVAILABILITY OF THE GOLF COURSE FOR OPEN SPACE DENSITY REQUIREMENTS IN PERPETUITY. THE PLANNING DEPARTMENT HAS CONCURRED IN THE FOREGOING CONDITION.

As indicated on DSEIS page 3.1-1, the Pierce County Superior Court upheld the continuing validity and enforceability of the Open Space Taxation Agreement and Concomitant Zoning Agreement which were intended to implement the Examiner's 1981 approval conditions. The court further ruled that the applicant is not precluded from applying to have restrictions modified, and that any such applications should be processed by the city in accordance with applicable land use laws. The court expressed no opinion whether the modifications should be granted. As indicated above, one of those applicable land use laws (RCW 58.17.215) precludes any consideration of the revision of the open space approval condition without the proper application, notice and consents being first obtained.

The City's Complaint for Declaratory Judgment in the above Pierce County Superior Court action contains a better and more accurate description of the manner in which the original applicant obtained PRD approval than does the DSEIS. Paragraphs 3.3 to 3.5 of the Complaint provide as follows:

3.3. Prior to 1978, all property now included in the Country Club Estates PRD, including the Golf Course, was owned by the Tacoma Land Company (TLC). The zoning classification for the property was R-2, One-Family Dwelling District. In 1981 the property was rezoned as R-2 PRD. At the time of the PRD rezone approval, the R-2 PRD zoning classification provided for greater flexibility in large scale residential developments, including, but not limited to: permitting townhouses, retirement homes and condominiums (not permitted under the standard R-2 zone); reductions or elimination of building setback requirements; opportunities to increase building heights above the standard 35 foot limit; reductions in lot size requirements and opportunities to reduce street rights of way below standard code requirements. Applying these PRD principles to the original PRD application resulted in approval for approximately 350 residential units above what would have been permitted under the standard R-2 zoning code requirements.

3.4. At the time of the original R-2 PRD zoning approval in 1981, the Golf Course was the subject of an "*Agreement Concerning North Shore Golf Course,*" (*hereinafter "Agreement"*) between NSGA as the owner of the Golf Course, and the developer of the surrounding Country Club Estates residential area (Exhibit B hereto). The Agreement allowed the residential property developer to include the Golf Course as

