

CITY COUNCIL STUDY SESSION ITEM

SUBJECT

Update on preparation and schedule for consideration of Land Use Code Amendments necessary to accommodate Light Rail Transit Facilities in Bellevue and to allow for a Consolidated Permit Process.

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POLICY ISSUES

Under the terms of the Umbrella Memorandum of Understanding for Intergovernmental Cooperation between the City of Bellevue and the Central Puget Sound Regional Transit Authority for the East Link Project (MOU), a strategy was described for identifying and processing amendments to the Bellevue Land Use Code. Section 6.1 describes the objectives for these amendments, and Section 14.2 and Exhibit G of the MOU provide that the code amendment process is required to be complete by December 31, 2012. These sections of the MOU are provided for City Council reference in Attachment A.

On January 9, 2012, the City Council was briefed on creation of the Code Amendment and Permitting Framework Technical Working Group (CAP TWG) that was constituted with City and Sound Transit staff to support the code amendment process. This study session memorandum briefly describes the preparation that has occurred since the CAP TWG was created, and the schedule for City Council consideration of 2012 Land Use Code amendments necessary to accommodate the East Link project and allow for a consolidated permitting process consistent with the objectives described in the MOU.

DIRECTION NEEDED FROM COUNCIL

- Action
- Discussion
- Information

BACKGROUND/ANALYSIS

On November 15, 2011, the City and Sound Transit entered into the MOU. One of the first milestones specified in the MOU was the development of a Collaborative Design Process (CDP) Management Plan. The CDP Management Plan included a process to identify potential code amendments, which was presented to Council on January 9. Under Paragraph 6.1 of the MOU, the City and Sound Transit agreed "to work cooperatively to identify and process a package of Land Use Code (LUC) and other technical code amendments that, if adopted, would accomplish the following objectives:

- a) Provide certainty and predictability for the City, Sound Transit and the public with respect to land use code requirements and processes;
- b) Allow the City Council, through a development agreement, to establish a comprehensive and consolidated permit process for the Project;
- c) Add provisions in the LUC to accommodate Light Rail Transit Facilities and Systems as a permitted use allowed under the consolidated permit process;
- d) Allow for extended vesting or duration of land use approvals for the Project;
- e) Provide a mechanism for addressing any LUC requirements that are impractical or infeasible for the Project; and
- f) Resolve identified technical code conflicts.”

Amendments to the LUC are legislative non-project decisions made by the City Council under its authority to establish regulations regarding future private and public development. These legislative actions are defined as Process IV decisions pursuant to LUC 20.35.015.E. Outreach for this code amendment process will include public notice and distribution of the draft code amendment when prepared, compliance with the State Environmental Policy Act (SEPA) requirements for review of legislative non-project actions, and a public hearing prior to Council action. Pursuant to Exhibit G of the MOU, the Council decided to conduct its own public hearing on the LUC amendment as allowed under the terms of LUC 20.35.400.

In addition to the objectives identified in Paragraph 6.1 of the MOU, Exhibit G refined and added to the desired objectives by stating that:

- Analysis of technical infeasibility under the code should be based on the Project description contained in the MOU;
- Amendments to the LUC should add definitions to accommodate light rail uses and related facilities;
- Extended vesting of land use approvals should be granted through a development agreement; and
- Allowances for further administrative modifications to the LUC requirements should be made through the applicable permitting process if such code requirements would be impracticable or infeasible for the Project.

Section 14.1 of the MOU outlines the timing expectations for processing amendments to the LUC by providing that Sound Transit may, in its sole discretion, terminate or work cooperatively to identify revisions to the MOU if the code amendments described in Paragraph 6.1 of the MOU have not been approved by the City Council as of December 31, 2012. The balance of this memorandum describes the preparation that has occurred to date, and the schedule recommended by the CAP TWG to help the City meet its obligations under the MOU to adopt LUC amendments by year end.

1. Preparation for Processing of the 2012 LUC Amendment Package.

The process to identify the 2012 code amendment package began with a background orientation for City and Sound Transit staff assigned to the CAP TWG. This process included CAP TWG chartering, an orientation to the MOU Project description and objectives, Link Light Rail tours to gain foundational knowledge regarding construction techniques, operations and maintenance, and briefings regarding the LUC content and structure. With a common

knowledge baseline, the CAP TWG recently initiated a high-level review of the LUC to identify provisions that might need to be amended in order to more clearly apply to unique aspects of the East Link project. This exercise focused on identifying “code gaps” to meeting mitigation expectations contained in substantive provisions of the code, and “process barriers” to permitting regional light rail in the comprehensive and consolidated way described by the MOU. This exercise will be completed in the next month. The CAP TWG will then prepare a recommended list of LUC amendments that should be processed as a package during 2012 under the terms of the MOU. Council concurrence on the scope of the amendment package will be sought in September, and a draft code amendment package for public comment and hearing will then be prepared.

Initial analysis has tentatively identified numerous LUC provisions that would require minor amendments in order to clarify applicability to light rail and to achieve desired outcomes articulated in the MOU. However, relying on the Project description at the stage of design required by the MOU makes it extremely difficult to anticipate every specific amendment that may be required. As a result, a piecemeal section-by-section LUC amendment approach would present a higher potential for unintended consequences that can decrease code clarity and usability for the public, the applicant, and staff responsible for administering the code. Amending numerous individual LUC sections would also prove challenging given the limited time available, and the need to meet all the required code processing requirements, such as required noticing, compliance with the SEPA, and preparation for the required public hearing.

Based on the initial analysis that has occurred to-date, the CAP TWG concluded that the most prudent strategy would be to create a regulatory “overlay” for regional light rail systems, instead of doing section-by-section amendments to the code. The East Link Steering Committee was briefed on the CAP TWG strategy, and its members supported presentation of the code amendment overlay approach to Council. More information on the overlay approach is provided in section 2 below.

2. Code Amendment Overlay Approach

The MOU alignment crosses over more than 20 different land use districts, including design districts, critical areas, and a small area of shoreline jurisdiction. Under similar circumstances, the creation of a tailored overlay has proven to be the most comprehensive and efficient approach to amending the LUC, instead of amending numerous provisions of the code to achieve the same end. The LUC already contains several overlays, including the Transition Area Design District, the Shoreline Overlay District, and the Critical Areas Overlay District.

The advantages of using an overlay are numerous. Using an overlay eliminates the need to amend multiple sections of the LUC to accommodate a linear light rail system that will traverse a wide range of land use districts and geographic conditions across the City. The overlay also allows for development of narrowly-tailored regulations that apply only to light rail in a single chapter which will enhance clarity and usability for all code users, including the public, the applicant, and the staff. Finally, given the ambitious schedule required to complete the drafting, an overlay structure will streamline the process and substantially reduce the likelihood of unintended consequences that could occur if amendments to the LUC were undertaken using a section-by-section approach.

3. Next Steps.

Staff is in the process of finalizing results of the code review that is essential to defining the scope of the 2012 LUC amendment package for Council consideration. To meet the December 2012 deadline, staff developed a schedule for processing the 2012 LUC amendment package which includes time for public outreach, SEPA compliance, study sessions, and the required public hearings. Relevant dates for processing of the 2012 LUC amendment package are identified below. Figure G-1 in Attachment A to this memorandum illustrates the relationship of the LUC Amendment work to other East Link Project milestones for Council reference.

Date	Action or Meeting
July 16	Study Session with Council to discuss 2012 LUC Amendment Package processing and schedule required under the MOU
September 17	Study Session with Council to frame scope of 2012 LUC Amendment Package
Late September	Staff distributes notice of the 2012 LUC Amendment Package scope endorsed by Council on September 17
October 1	Courtesy Public Hearing before the East Bellevue Community Council
October 8	Study Session with Council on Draft LUC Amendment language
October 22	Public Hearing before Council on Draft LUC Amendment language
Oct. – Nov.	Additional Study Sessions with Council (if requested)
December 3 or December 10	Adoption of Code Amendments (schedule dependent on 2012 Budget)
January or February 2013	Final Public Hearing before the East Bellevue Community Council

ALTERNATIVES

No action is currently requested of the Council. Unless alternative LUC amendment packaging or scheduling suggestions are made, staff will introduce the code amendment package and process according to the schedule that is outlined above.

RECOMMENDATION

Proceed to introduce and process the code amendment package as described in these July 16, 2012 study session materials in order to meet the obligations contained in the MOU.

ATTACHMENT A: Excerpts of East Link MOU Sections Referenced in the Packet

AVAILABLE IN COUNCIL OFFICE FOR REVIEW: N/A

Excerpts of MOU referenced in July 16 Packet Materials

6.0 POTENTIAL REGULATORY CHANGES

- 6.1 The parties agree to work cooperatively to identify and process a package of Land Use Code (LUC) and other technical code amendments that, if adopted, would accomplish the following objectives:
- a) Provide certainty and predictability for the City, Sound Transit and the public with respect to land use code requirements and processes;
 - b) Allow for the City Council, through a development agreement, to establish a comprehensive and consolidated permit process for the Project;
 - c) Add provisions in the LUC to accommodate Light Rail Transit Facilities and Systems as a permitted use allowed under the consolidated permit process;
 - d) Allow for extended vesting or duration of land use approvals for the Project;
 - e) Provide a mechanism for addressing any LUC requirements that are impractical or infeasible for the Project; and
 - f) Resolve identified technical code conflicts
- 6.2 For purposes of this MOU and Exhibit G (Code and Permitting), attached and incorporated herein, references to "development agreement" shall refer to development agreements as defined and authorized pursuant to RCW ch. 36.70B or such other form of agreement determined by the parties to be appropriate to accomplish the objectives described herein.
- 6.3 Attached to this MOU is Exhibit G explaining in further detail the land use approval framework the parties intend to pursue following execution of the MOU. Exhibit G includes Figure G-1, which illustrates how the parties anticipate that the code and permitting framework and Collaborative Design Process described in Section 2.4 and Exhibit E may be integrated.

14.0 TERM; TERMINATION

- 14.1 This MOU shall be effective as of the date the last party signs. Unless terminated sooner pursuant to the terms hereof, this MOU shall remain in effect until the completion of Project closeout or five (5) years after commencement of Project operation, whichever occurs earlier; provided, however, that the term shall automatically extend to allow the parties to conclude the cost reconciliation procedures described in Section 4 (City Contribution and Reconciliation Procedures).
- 14.2 In the event that the code amendments described in Section 6.1 (Potential Regulatory Changes) have not been approved by the City Council as of December 31, 2012, Sound Transit may, in its sole discretion, terminate this MOU or work

cooperatively with the City to identify appropriate revisions to the MOU. In the event that the City Requested Modifications described in Section 5.4(a) and (b) have not been adopted by the Sound Transit Board as a modifications to the Project description or the necessary state or federal approvals for the City Requested Modifications are not obtained as of December 31, 2012, the City may, in its sole discretion, terminate this MOU or work cooperatively with Sound Transit to identify appropriate revisions to the MOU.

- 14.3 In the event that a portion of the Project to be constructed in the City is for any reason determined by the Sound Transit Board or by the City of Bellevue, to be unaffordable due to increased cost or insufficient revenue legally available under the Project financial plan or without additional voter approval to the party responsible for contributing the revenue, or to be impractical or infeasible to accomplish due to changed or unforeseen conditions, legal prohibition, or force majeure events, the parties are excused from further performance under this MOU. In the event the parties are excused from further performance, the parties will work cooperatively to identify appropriate revisions to the Project's scope; schedule or budget, provided however, any final decisions regarding revisions to the Project's scope, schedule or budget will be made by the Sound Transit Board consistent with the policies in the approved ST 2 Plan. The parties shall also cooperatively address Sound Transit's need for and use of city-owned properties.

Exhibit G: Code and Permitting

MOU CODE AND DISCRETIONARY PERMITTING FRAMEWORK

Following execution of the MOU, Sound Transit will begin the final design process with the goal of achieving a 60% Project design plan and Project baseline budget within approximately two and one half years. Typically Sound Transit applies for local land use permits at approximately the 60% Project design plan stage, with Project baseline budget established after any required land use approvals are issued. It is the intent of the parties to identify and process amendments to the City's Land Use Code that allow for a consolidated land use permitting process for the East Link Project. Such amendments are anticipated to provide certainty and predictability with respect to permitting processes and requirements both for Sound Transit as the project applicant and to interested parties commenting on or otherwise participating in the permitting process.

LAND USE AND TECHNICAL CODE AMENDMENT PACKAGE

The City Council, through a legislative action, is the final decision maker on amendments to the City's Land Use Code (LUC), according to the Process IV procedures and criteria in Part 20.35 of the LUC. Nothing in this MOU is a waiver or limitation of the City's legislative authority, nor is any particular legislative outcome contracted for in this MOU. Rather, the parties agree to work cooperatively to identify and process a package of LUC and other code amendments that, if adopted, could accomplish the following objectives:

- Allow for the City Council, through a subsequent development agreement, to establish a consolidated permit process for the East Link project;
- Amend requirements of the LUC that are technically infeasible for the East Link Project, based on the Project description that is the subject of this MOU;
- Amend and add definitions in the LUC consistent with this MOU to accommodate light rail uses and related facilities
- Allow for extended vesting of land use approvals through a development agreement; and
- Allow for further administrative modifications to LUC requirements through the applicable permitting process if such code requirements are impracticable or infeasible for the Project
- Resolve identified technical code conflicts

It is the intent of the parties to initiate the code amendment process, utilizing the City's Process IV provisions with a public hearing directly with the City Council, as allowed under LUC Section 20.35.400, with sufficient time to complete the process by no later than December 31, 2012, unless otherwise agreed by the parties.

DEVELOPMENT AGREEMENT

If the City Council approves an amendment to the LUC that allows for a development agreement in association with a light rail project, the parties agree to work cooperatively to negotiate a development

agreement that, if approved by the agencies' respective legislative bodies, could accomplish the following objectives:

- Identify the project scope;
- Define the consolidated permitting process, including minimum notice and public participation requirements, identifying the decision-maker on the required land use permits, and establishing an appeal process, which may or may not include an administrative appeal;
- Define the vesting process for the consolidated permit process;
- Establish specific decision criteria for the consolidated permitting process and development standards for the project, considering existing elements of the City's comprehensive plan, the City's Light Rail Best Practices Manual and results and outcomes from the CDP established by this MOU;
- Provide for authority for the decision-maker on the consolidated permit process to allow for administrative modifications to LUC provisions, where compliance with such provisions is impracticable or infeasible; and
- Establish permit processing plan, including fee estimate, as developed through the CDP.

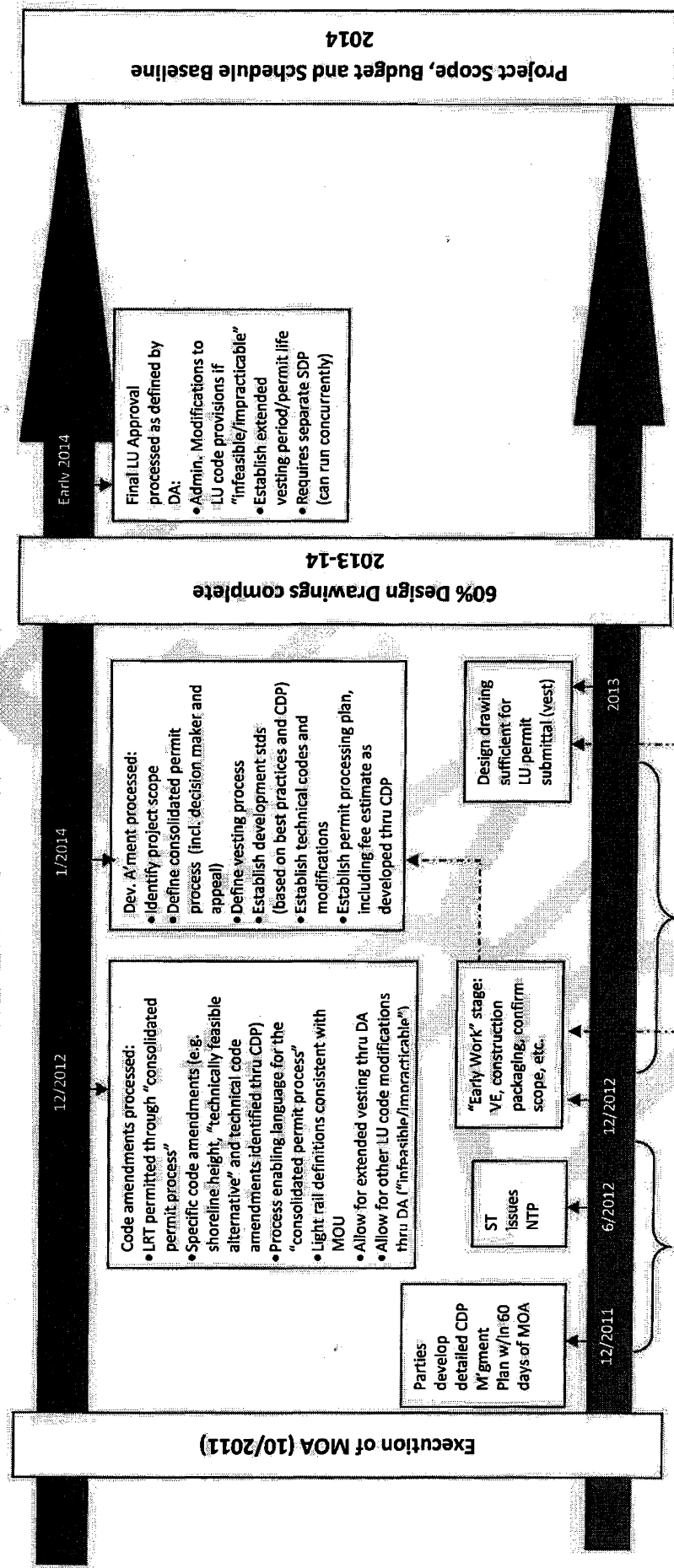
It is anticipated that any development agreement would be negotiated and considered by the Parties' respective legislative bodies through the requirements established by RCW ch. 36.70B by no later than **January 31, 2014** or as otherwise mutually agreed by the Parties. It is recognized by the parties earlier action on a development agreement increases the potential for savings in final design costs.

Nothing in this Exhibit G is intended to waive or modify City of Bellevue permit processes or other powers or authorities. It is understood that at the appropriate stage of design, Sound Transit will submit to the City for required land use approvals and nothing in this MOU shall be construed as an approval of such permits or a pre-determination of compliance with applicable codes and standards.

Figure G-1 illustrates the Code and Permitting Framework established by this Exhibit G.

**FIGURE G-1
FOR ILLUSTRATIVE PURPOSES ONLY**

Code and Permitting Framework



Collaborative Design Process

- Notes:**
- All dates anticipated
 - Specific terms of MOU govern any conflict with this exhibit