

TUMWATER GENERAL GOVERNMENT COMMITTEE
MINUTES OF VIRTUAL MEETING
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CONVENE: 8:00 a.m.

PRESENT: Chair Michael Althaus and Councilmembers Joan Cathey and Leatta Dahlhoff.

Staff: Planning Manager Brad Medrud.

APPROVAL OF MINUTES:
GENERAL
GOVERNMENT
COMMITTEE,
APRIL 12, 2023:

MOTION: **Councilmember Dahlhoff moved, seconded by Councilmember Cathey, to approve the minutes of April 12, 2023 as published. A voice vote approved the motion unanimously.**

REGIONAL HOUSING
COUNCIL FRANZ
ANDERSON PROJECT –
LETTER OF
COMMITMENT:

Manager Medrud briefed members on the status of the Franz Anderson project to provide permanently supportive housing benefitting the region. The City of Olympia is completing a draft sale and purchase agreement for execution in June 2023, as well as an interlocal agreement with the City of Tumwater, City of Lacey, and Thurston County for the use of funds for the project.

Jacinda Steltjes, Affordable Housing Program Manager with the City of Olympia, reported the Olympia City Council reviewed the letter of commitment. At this time, representatives from the cities of Lacey, Olympia, and Tumwater and Thurston County scored proposals and selected Low Income Housing Institute (LIHI) to complete the project. A draft agreement has been forwarded to LIHI for review. The intent is to execute the purchase and sale agreement at the Council's June 20, 2023 meeting. The purchase and sale agreement is the real estate transaction. The City of Olympia will also execute an operating agreement and restrictive covenants to ensure the site is used in perpetuity for permanent supportive housing. The Olympia City Council wanted to ensure all regional partners were informed about the status of efforts.

Ms. Steltjes said the letter of commitment is for ARPA funding from the City of Tumwater. The City of Tumwater verbally committed to provide ARPA funds during Regional Housing Council meeting discussions on the Franz Anderson project. Thurston County is also contributing ARPA funds while the City of Lacey will contribute funds from another funding source. Following the execution of the purchase and sale agreement, the next step is execution of an interlocal agreement with the jurisdictions for receipt of the funds and for disbursement of those

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funds for the project.

Chair Althausen asked whether a Council worksession has been scheduled to discuss the project. Manager Medrud advised that the letter is scheduled for discussion at the Council's May 16, 2023 meeting. The letter of commitment has been moved as a Council consideration item for additional discussion and action.

MOTION:

Councilmember Cathey moved, seconded by Councilmember Dahlhoff, to schedule the letter of commitment for the May 16, 2023 City Council meeting for Council consideration with a recommendation of approval. A voice vote approved the motion unanimously.

**TREE AND VEGETATION
PRESERVATION
REGULATION UPDATE:**

Manager Medrud briefed the committee on the status of the update of tree and vegetation preservation regulations. He outlined the agenda for the briefing on the proposed amendments. The Tree Board and the Planning Commission received a briefing on the proposed amendments and the structure of the ongoing discussions on the update process over the summer.

The City has not updated the tree and vegetation preservation code since 2006 although a number of actions have occurred since 2006 to include adoption of the Urban Forestry Management Plan in 2021 following a four-year process. The Urban Forestry Management Plan established the importance of the "right tree in the right place" and defined the process and steps to enact the plan. One of the first steps is updating regulations. The purpose of the briefing is to share information on the totality of the update and information on how each element is related as well as identifying important elements of focus.

Manager Medrud asked members to respond to two questions:

- What were the big takeaways for you from the community conversations and public outreach?
- What is the primary issue that you want to see addressed as part of the code amendments?

Member responses included:

- Chair Althausen said some of his main takeaways included how the public resonated with the focus on the "right tree in the right place" because there was little divergence from that philosophy from both personal conversations with the public and other conversations he has learned about. In terms of the primary issue to address within the code

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update, it is still unclear, at least to him, as to how the code provides significant protections from development projects, such as the requirement for the number of trees to retain. It would be helpful to have a greater understanding of where the lines fall in terms of the code because the code is dense and difficult to interpret. Simplification is an important value to him personally to ensure the code is understandable by the public and by the development community.

- Councilmember Cathey commented that the value of the “right tree in the right place” means street trees to many community members during her conversations with neighbors and community members. Many do not connect that value with trees removed because of development because many residents view the removal of trees as “no tree in any right place” and that no one plans to replant trees that have been removed. She noted that she speaks from a perspective where community members expressed frustration and anger surrounding the removal of trees. Some areas in the City have more trees or “significant” trees. However, she is unsure what the definition of a “significant tree” means. There is confusion concerning the terminology as it could also entail a heritage tree. An issue she would like addressed in the code are the requirements for a permit because it appears anyone can receive a permit as the code permits the removal of up to six trees every three years. That is a significant number of trees that could be removed at one time. Additionally, the code does not specify the size of tree that can be removed. Some people believe a tree is a nuisance tree if it drops its leaves at a specific time. She is frustrated because recently, over two, two hundred-foot trees were removed. She contacted staff and asked whether the owner had obtained a permit to remove the trees. Staff confirmed the owner secured a permit. She asked staff whether they had visited the site. She was informed that the owner sent the City a picture of the trees. At least four to five of those types of trees have been removed in her neighborhood in the last 18 months, which troubles her. Many in community are not happy with the replacement tree requirements, as those mature trees cannot be replaced. She is concerned about the number of trees property owners can remove with a permit from the City with no staff oversight visit to the site of the tree(s). She questioned the bright line in terms of the code, as regulations are not effective unless the City enforces them. The code stipulates replacement by some standard that is often not understood by the average person.

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Although she is appreciative of the efforts to update the code, she wants to ensure everyone is aware of the continuing loss of trees in the City.

- Councilmember Dahlhoff said the proposed amendments should provide clear guidance within the code for new development, redevelopment, and existing development. One example is the removal of trees by many of her neighbors several years ago. She also had some trees trimmed and removed to accommodate solar panels. The proposed regulations do not speak to a tree waiver permit. The code requires a photo, identification and measurement of the tree(s), and a waiting period of 28 days. She questioned how a person who has no access to a computer or access to the internet could comply with the code. She questioned the waiting period of 28 days especially when an appeal period is only 14 days. The timeframe is problematic and confusing, as well as the section of the code that is applicable. She questioned why a duplicative process is necessary when she previously applied for the solar panel installation permit that also included an inspection by the City. Adding more bureaucracy impacts the community when many residents are installing solar or protecting other properties from damage caused by trees. The issue surrounding credits is also confusing as to how it applies when dangerous trees are removed or trees over a septic field are removed. She offered to forward notes on additional concerns. The code focuses more on new development and redevelopment. She believes more time should be expended on existing development surrounding single family residential infill and how trees can be retained. Additionally, phrases such as, “as deemed appropriate” or “the City deems necessary because of special circumstances or complexity” are not understandable in terms of how they are applied. More time is warranted to address some of the language.

Councilmember Cathey commented on the numerous instances of tree removal in neighborhoods for various reasons ranging from hazards caused by a tree, owner preference, or clearance to accommodate a new deck or fence. She asked whether City staff visit the sites of an owner requesting a permit to confirm the situation visually or whether staff relies solely on the photograph submitted by the owner.

Manager Medrud advised that he would follow up with permitting staff to verify the process.

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Chair Althausen pointed out that the Gap Analysis identified the possibility of implementing a minor and major tree permit system, which could include more stringent requirements for larger mature trees as opposed to smaller trees.

Councilmember Dahlhoff recommended spending time to review the more complex issues and streamline the smaller issues by incentivizing or supporting solar and other initiatives to avoid adding more bureaucracy, steps, check-ins, and more submittal requirements.

Chair Althausen referred to the recommendation as part of the Gap Analysis to develop a user guide as a simple way for the community to interpret and understand what is and what is not allowed. Manager Medrud advised that the consultant has been asked to prepare a scope of work to develop a user guide.

Manager Medrud reported extensive notes were recorded from the recent joint Tree Board and Planning Commission meeting as similar concerns were echoed in terms of processes.

Councilmember Dahlhoff recommended simplifying the code by compiling sections that are applicable for specific situations, such as tree removal to accommodate solar panel installation or a section on removal of dangerous trees.

Councilmember Cathey questioned whether there are any requirements for removal of trees with respect to age and size and whether the City has identified preservation goals for retaining large trees. The recent incidence in her neighborhood with the removal of the large mature trees have left a gap in the trees that once served as habitat for birds and helped to cool temperature. She questioned the goal of balancing the removal of trees against the City's commitment to combat climate change. There should be some kind of justification for removing trees rather than simply wanting to remove a legacy tree. She acknowledged the importance of balance with respect to the rights of property owners.

Chair Althausen added that the issue is challenging because if the code is overly prescriptive, the City runs the risk of constitutional challenges under the takings clause.

Councilmember Dahlhoff commented on issues associated with many property owners not aware of the requirement to obtain a permit for removal of trees as many of the tree removal companies defer to the property owner to secure the appropriate permits. Regulations that are too onerous and complicated might result in

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clandestine removal of trees.

Councilmember Cathey advocated for more clarity and consistency in the code without violating property rights in addition to enforcement actions when necessary.

Councilmember Cathey surmised that some of the issues surrounding illegal removal of trees could be related to the lack of staff resources to visit sites.

Councilmember Dahlhoff recommended considering a form of documentation by tree service companies when performing work in the City so the City can track the information in support of updating existing tree canopy in the City.

Manager Medrud acknowledged the feedback and affirmed that both the Tree Board and the Planning Commission are committed to figuring out how the update can be effective to achieve both the City's objectives for providing a level of protection and providing the community with a code that is not onerous or trespasses on individual property rights.

Manager Medrud reported environmental and equity issues are very important to ensure that those areas of the City that currently lack tree cover have the ability to add trees over time while ensuring no additional regulatory burdens on those communities to retain trees.

The history of the project began with the City Council establishing four major Strategic Priorities. One priority was actions for urban forestry. Community and urban forestry is defined in the Urban Forestry Management Plan as all trees and vegetation on public and private property in the City. The plan measures success over time by an increase in tree canopy. The Council adopted the Urban Forestry Management Plan in 2021. A number of implementation actions are identified in the plan to ensure the urban forest expands. One important goal and action in the plan is ensuring the City's regulations are updated to match the intent of the actions in the Urban Forestry Management Plan.

Other strategic priorities are supported by goals in the Urban Forestry Management Plan to balance the protection of and support of the community urban forest with other City Strategic Priorities to include providing affordable housing, developing a walkable urban community, economic development, addressing climate change, and protecting endangered species. The update seeks a balance between protections of trees and vegetation and other City strategic priorities.

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Councilmember Cathey stressed the importance of also highlighting the protection of trees and vegetation to preserve habitat for wildlife and birds.

Manager Medrud commented on the likelihood that the proposed amendments will likely result in increased costs to property owners, homeowners, and renters as they comply with the regulations, as well as increased costs to the City for enacting and enforcing the regulations. There are ways to mitigate costs for particular income groups, which is a discussion topic for the Council to consider in terms of resource commitments.

Regulations protecting the City's urban forest do not exist in a vacuum. Regulations support a number of City goals, such as creating a healthy, equitable, and climate-resilient community. However, the proposed amendments could potentially conflict with other priorities, such as reducing sprawl by concentrating growth within the urban area rather than throughout the county. The City is also responsible for allowing the creation and maintenance of affordable housing. The City is required to protect endangered species as well as actions for economic development and redevelopment to ensure that those who live in the City have a place of employment and facilities to recreate.

Actions completed to date include working with the Watershed Company beginning in summer 2022 to assist in the update process. The consultant team played an instrumental role in assisting staff in developing the public engagement process, completing the Gap Analysis, and providing examples of other community processes. Staff anticipates that the update process will continue through September at the Tree Board and Planning Commission level to enable sufficient time to cover all issues. The code adoption process is scheduled to begin at the end of this year for the City Council. The timeline is subject to change.

The project website at *tumwatertreecity.com* includes social media promotion, print materials, mailing to all property owners and tenants in the City, posters, Community Conversations recordings, external stakeholder meetings, and direct engagement. All City residents received a mailing informing them of the public engagement process for the update.

Community Conversations began in November and concluded in January 2023. The three meetings were offered both online and in-person and were facilitated by staff and the Watershed consultant

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team. Community members provided input on the following:

- Addressing environmental justice and equitable allocation of resources
- Programs and incentives to support the community by tree planting and reforestation on public property
- Preserving and replacing of trees
- Designating special trees and groves
- Allocating tree account funds

The proposed code includes a refinement of groves as a location containing three or more trees. Staff continues to work on assigning a value to groves.

During Community Conversation #2 in December 2022, community members who attended the first Community Conversation were asked if they wanted to participate in specific focus group discussions. Based on stakeholder feedback, five topics were identified for discussion by the focus group:

- Environmental equity and resource allocation
- Protection of large trees and groves
- Tree retention and replacement standards
- Development incentives
- Enforcement and penalties

Community Conversations #3 held in January 2023 included a discussion on the themes shared during the first two Community Conversations. Community members provided input on how to quantify tree retention and incentives for tree preservation.

Overall, Community Conversations themes focused on:

- Protecting large diameter trees
- Considering habitat value of trees, groves, and corridors
- Clear permitting requirements
- Stronger tree retention and replacement requirements
- Incentives for homeowners and developers
- Climate change mitigation and adaptation
- Stricter code enforcement and strong, but fair penalties for violations
- Use a credit system for determining tree retention and replacement

The development of the Gap Analysis by the consultant team identified current regulations and regulatory gaps. The Gap Analysis is posted on the website and includes an Introduction and

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Methods, Analysis of Existing Ordinance, Additional Recommendations, and Coordination with other City Plans & Policies. The Gap Analysis identified potential changes in five categories of reorganization of code sections, early urban forestry review at pre-submittal, arborist reports/site plan requirements, tree retention and replacement standards, and major/minor permit types. Priority topics identified included:

- Tree retention & replacement requirements
- Tree protection designations for large diameter trees
- Update methodology for quantifying tree retention
- Permit types & requirements
- Incentives for development projects & existing property owners
- Maintenance requirements for tree tracts within HOAs & commercial/industrial sites

Manager Medrud reported the staff report includes current and proposed versions of the code. Staff and the consultant team developed the proposed version of the code based on the Gap Analysis and feedback from the community through the three Community Conversations, online open house, and written comments, as well as meetings with the Planning Commission, Tree Board, and General Government Committee. Staff continues to review the details of some proposed code sections. The intent is to present a full version of the staff recommendation for the code to a joint worksession with the Tree Board and Planning Commission on June 13, 2023.

Based on Gap Analysis Sections 2.3 and 2.4 and community feedback, staff and the consultants reviewed definitions to be clear and easy to understand, removed definitions no longer used, reviewed definitions for consistency, added more definitions of trees, and added other definitions as needed.

Particular definitions for review by the Tree Board and the Planning Commission include:

- Buildable area
- Critical root zone
- Development
- Grove tree
- Hazard, unhealthy trees, and nuisance trees
- Landmark trees/heritage trees
- Project permits
- Significant tree
- Tree

- Vegetation

The section on Heritage Trees was updated adding more information on how the City evaluates heritage trees, specificity for the process for heritage tree removal, and a requirement for a written landowner consent form and the notice on title.

A new section on Landmark Trees was added based on the Gap Analysis and community feedback to recognize that larger trees should be retained more than smaller trees because of greater benefits such as carbon sequestration and habitat. Landmark trees are defined in the Definitions section. Size thresholds for a landmark trees vary in the state. Critical habitat protections for animals and vegetation will continue to be addressed in TMC 16.32 Fish and wildlife habitat protection. Greater protections for landmark trees should be balanced with other City strategic priorities and property owner rights and responsibilities.

Staff explored a number of ways for evaluating the number of trees a property should have, such as a canopy cover approach on individual sites or a tree credit approach. For ease of understanding and implementation, staff prefers the tree credit approach. Tree credits are a general indicator of tree size and canopy cover over time. Tree diameter by species is used to correlate canopy, age, and ultimate size when assessing retention values for specific species. Specific land use zone districts or uses will have specific minimum tree density credits that must be met. During permit review, existing tree credits will be calculated based on trees retained versus removed. Tree credits are used because of the ease of data collection regardless of the expertise as they do not require aerial imagery, online data sources, and trunk size is easily quantifiable. The tree credit method has cost implications, which vary based on the level of staffing available to review permit applications and the rigor of review requirements. The tree credit approach would likely require a tree survey whereby each tree is measured, which requires staff resources and to review the survey to ensure its accuracy.

Manager Medrud cited the City of Burien's code as an example. For a 5,400 square foot single-family residential property, 1 tree credit is required per 1,000 square feet of developable area for 5.4 minimum tree credits. Additionally, existing trees on the site are assigned credits based on tree diameter.

The current version of TMC 16.08 allows for tree removal based on the development proposal. On any parcel of land, 30% of existing trees can be removed within a ten-year period. On sites proposed for development, 20% of existing trees or 12 trees per acre must be

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retained, whichever is greater. Six trees every three years can be removed on developed properties except for heritage trees or in greenbelts or critical areas.

Based on the Gap Analysis and community feedback, the team updated when the Tree Account may be used, especially in support of addressing equity.

A new section on Tree & Vegetation Removal Permits was added:

- Created new permit types that differentiate based on project size and type
- Added more specificity to the permitting types and requirements to streamline the permitting process and more efficiently allocate staff resources for small-scale permit review versus large-scale development projects
- More specificity could also aid in enforcement of TMC 16.08 and monitoring short- and long-term trends in tree removal types and processes
- Updated the types of reports and plans that need to be submitted for a complete application for each permit type, including the level of detail needed for arborist reports
- The proposed version of the code integrates the current land clearing permit process into the proposed minor and major tree removal permit process:
 - Minor tree removal permits would be for tree removal on properties that are not part of a development permit application being reviewed
 - Major tree removal permits would be for tree removal on properties that are a part of a development permit application being reviewed
- Updated the materials required to be submitted with permit applications

Councilmember Cathey said the minor tree removal permit would not prevent the removal of large mature trees. She questioned how the City could control those types of tree removals as it appears the property owner is not required to justify the reason for removing a tree.

Chair Althausen noted that the provision would not allow property owners to remove all trees over a period of time because all properties in the City would need to abide by the rules to include the tree credit program.

Manager Medrud explained that property owners of developed

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properties must also adhere to the minimum tree retention requirement, which would prohibit the removal of all trees on a site. Prohibiting a property owner from removing a tree could be legally challenged. Some level of flexibility is needed. Currently, the City does not have a tree credit system. The proposal improves the current provisions.

Councilmember Dahlhoff asked whether areas of septic systems and drainage fields are subtracted from the parcel size. Manager Medrud explained that staff continues to evaluate those types of issues.

A new section describes major tree removal permits for new development. Major tree removal permits would be required for removing trees on properties that are a part of a development permit application being reviewed. The process establishes permit application submittal requirements and review process that are submitted with and reviewed in conjunction with project permits. A tree retention plan is required as well as replacement plan if property is below required number of tree credits.

The Tree Retention section updates tree retention standards for the number of trees that need to be retained on a property either subject to or not part of a current development, establishes tree condition rating standards, includes tree retention priorities and locations, considers decreasing the removal allowances on properties without a development permit, establishes tree size, species, and location as criteria for retention, and provides additional protections for retention of large diameter trees, such as those equal to or greater than 24 inch dimension at standard height.

The section on tree replacement addresses circumstances where tree retention does not meet code standards for tree credits. the section establishes replacement standards and ratios, the number and the location of the tree species. the current code includes a 1:1 replacement ratio for trees. Trees greater than 24 inches in diameter are valued as two trees. New development requires a 3:1 ratio of replacement trees.

The section on maintenance requirements and how maintenance is established in maintenance agreements. Maintenance covers the initial three-year establishment period to ensure trees planted survive and ongoing maintenance after the initial period. Standards are included for tree punning.

Within the exemptions section, staff reviewed the current level of exemptions and found they are consistent with exemptions in other

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recently update tree preservation codes. The Gap Analysis identifies one exemption addressing the Urban Forestry Management Plan for mitigation and conservation areas created under an approved Habitat Conservation Plan, which would be exempt from tree preservation.

A section on Alternative Plans enables submission of alternative plans that provide better protections than the existing code. Some language has been included in the section on permitting criteria for alternative reports or plans submitted in place of the required site plans and arborist report for a development project or land clearing permit.

The appeal procedure section for both civil and criminal penalties was revised and updated in the proposed version.

Other related issues not reflected in the proposal include the process for regulating businesses that prune and remove trees. Staff and the consultant team are reviewing processes for regulating businesses that prune and remove trees. Those processes could include the following:

- Requiring registration and education with penalties if trees are pruned or removed improperly or without a permit.
- Requiring any arboriculture or forestry professional working within the City to be licensed and bonded, obtain a City endorsement to their State Business License, as well as submit a signed statement declaring their understanding of the City's urban forestry regulations.

Another issue was identified earlier in the year during the update of the Thurston Hazard Mitigation Plan, a FEMA required document that considers all potential natural disasters. Urban wildlife fire has been identified as a risk. The new State Building Code Council adopted the International Wildland Urban Interface Code, which establishes minimum requirements for land use and built environment in designated wildland-urban interface areas, such as limiting the amount and type of trees and vegetation that are near structures. The City will likely adopt the Code as part of its state-required Building Code update to be completed by July 1, 2023. More than half the City will be affected by the new requirements. Staff is evaluating how the adoption of the Code will affect the update to TMC 16.08, as well as the update to the City's landscaping code that may result in changes to the proposed version of TMC 16.08.

Updates to the Street Tree Code and the Street Tree Plan Update

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follow a similar process. Staff is drafting code amendments to for review during the summer with the ordinance scheduled for adoption by the end of the year. A similar schedule has been adopted for the Landscaping Code update.

Next steps include SEPA Review and Notice of Intent in late May or June.

The joint Planning Commission and Tree Board worksession on Tuesday, June 13, 2023 will focus on definitions, landmark trees, tree credits, and tree account. A Planning Commission worksession scheduled on Tuesday, June 27, 2023 will follow up on questions addressed at the June 13, 2023 joint worksession. The next joint Planning Commission and Tree Board worksession is scheduled on Tuesday, July 11, 2023 to review tree retention and replacement, tree and vegetation removal permits system, exemptions, and alternative plans. A joint worksession on Tuesday, August 8, 2023 will focus on remaining sections of the code. Staff proposes scheduling a public hearing on the proposed ordinance at the Commission's meeting on September 26, 2023. The committee will receive another update at its August meeting. The formal adoption process will start in January 2023 by the City Council.

Councilmember Cathey announced that during the review another tree was removed in her neighborhood.

**SERVICE PROVIDER
AGREEMENT FOR BUSH
PRAIRIE HABITAT
CONSERVATION PLAN
PHASE 3:**

Manager Medrud reported the recommended action is to review and schedule the Service Provider Agreement for the May 16, 2023 City Council consent calendar with a recommendation of approval. The Service Provider Agreement is with ICF Jones & Stokes, LLC for Phases 1 and 2. The Council approved the grant for Phase 3 to complete work on the Habitat Conservation Plan (HCP). The grant provides additional funds to complete the HCP and initiate and complete the environmental review process. Additional funds are available in the Phase 2 grant. Staff plans to apply for an extension of the grant to cover the costs of environmental review. Additionally, staff will identify actions needed for implementation of the HCP. The grant is for \$225,000. The Service Provider Agreement is for \$304,000, which includes the required match by the City and the Port to complete the work.

MOTION:

Councilmember Dahloff moved, seconded by Councilmember Cathey, to schedule the Service Provider Agreement for the May 16, 2023 City Council consent calendar with a recommendation of approval. A voice vote approved the motion unanimously.

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ADJOURNMENT: **With there being no further business, Chair Althausen**
adjourned the meeting at 9:46 a.m.

Prepared by Valerie L. Gow, Recording Secretary/President
Puget Sound Meeting Services, psmsoly@earthlink.net