AGENDA
CITY OF SHORELINE PLANNING COMMISSION
REGULAR MEETING

Thursday, March 17, 2005
7:00 P.M.

Shoreline Conference Center
Board Room
18560 – 1st Ave NE

		Estimated Time
1.	CALL TO ORDER	**7:00 p.m.**
2.	ROLL CALL	**7:02 p.m.**
3.	APPROVAL OF AGENDA	**7:04 p.m.**
4.	APPROVAL OF MINUTES a. February 17, 2005 b. March 3, 2005	**7:06 p.m.**
5.	GENERAL PUBLIC COMMENT	**7:10 p.m.**

The Planning Commission will take public testimony on any subject which is not of a quasi-judicial nature or specifically scheduled for this agenda. Each member of the public may comment for up to two minutes. However, Item 5 (General Public Comment) will be limited to a maximum period of twenty minutes. Each member of the public may also comment for up to two minutes on action items after each staff report has been presented. The Chair has discretion to limit or extend time limitations and number of people permitted to speak. In all cases, speakers are asked to come to the front of the room to have their comments recorded. Speakers must clearly state their name and address.

6.	STAFF REPORTS i. Critical Areas Ordinance Update a. Staff Report b. Public Testimony or Comment c. Close/Continue Public Hearing	**7:15 p.m.**
7.	REPORTS OF COMMITTEES AND COMMISSIONERS	**9:25 p.m.**
8.	UNFINISHED BUSINESS	**9:28 p.m.**
9.	NEW BUSINESS	**9:30 p.m.**
10.	ANNOUNCEMENTS	**9:32 p.m.**
11.	AGENDA FOR March 31st Special Meeting (6 P.M. Board Room) TENTATIVE joint public hearing with the Hearing Examiner on the SEPA Appeal of the Echo Lake Site-Specific Comprehensive Plan Amendment/Contract Rezone and the Planning Commission hearing	**9:34 p.m.**
12.	ADJOURNMENT	**9:40 p.m.**

The Planning Commission meeting is wheelchair accessible. Any person requiring a disability accommodation should contact the City Clerk's Office at 546-8919 in advance for more information. For TTY telephone service call 546-0457. For up-to-date information on future agendas call 546-2190.

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CITY OF SHORELINE

SHORELINE PLANNING COMMISSION
SUMMARY MINUTES OF REGULAR MEETING

February 17, 2005 Shoreline Conference Center
7:00 P.M. Board Room

PRESENT
Chair Harris
Vice Chair Piro
Commissioner McClelland
Commissioner Kuboi
Commissioner Hall
Commissioner Sands
Commissioner Broili

STAFF PRESENT
Tim Stewart, Director, Planning & Development Services
Matt Torpey, Planner II, Planning & Development Services
David Pyle, Planner I, Planning & Development Services
Paul Inghram, Berryman & Henigar
Jessica Simulcik, Planning Commission Clerk

ABSENT
Commissioner MacCully
Commissioner Phisuthikul

1. CALL TO ORDER

The regular meeting was called to order at 7:03 p.m. by Chair Harris, who presided.

2. ROLL CALL

Upon roll call by the Commission Clerk, the following Commissioners were present: Chair Harris, Vice Chair Piro, Commissioners Kuboi, Sands, Hall, McClelland and Broili. Commissioners Phisuthikul and MacCully were excused.

3. APPROVAL OF AGENDA

The agenda was approved as submitted.

4. APPROVAL OF MINUTES

The minutes of February 3, 2005 were approved as written.

5. GENERAL PUBLIC COMMENT

Janet Way, 940 Northeast 147th Street, reminded the Commission that the intent of the State law is to protect the critical areas. Any measures that are taken to parse the words in order to undermine the protections would be inappropriate. It should be the City's objective to support the protection of critical areas and improve them. According to her understanding of the State law and the Endangered Species Act, if a stream has potential habitat, it must be restored. She referred to the center column of the matrix on Page 55 of the Staff Report, which identifies the Planning Commission comments related to the classification of a stream (Section 20.80.470). She said she finds the last Planning Commission comment to be very perceptive, and she agreed that the objective of this proposed amendment appears to have been added to address the issue of the one fish that was sited in Thornton Creek.

Ms. Way emphasized that the goal of the Thornton Creek Legal Defense Fund is to avoid undermining and degrading Thornton Creek specifically, but also the other streams, as well. She urged the Commission to find ways to regenerate the streams rather than creating an ordinance that protects the City from having to do so.

Virginia Paulsen, 16238 – 12th Northeast, said her vision for Shoreline is embedded on what Shoreline was 150 years ago and includes reforesting the area and protecting the environment. She said she would even like to have the native plants reintroduced at Ronald Bog Park. While recently visiting the Lake Forest Park Mall, she stopped in at Wild Birds Unlimited because they had native trees and plants in front of their establishment. She learned that Lake Forest Park has a Community Wildlife Habitat Project to protect their wildlife and waterways one yard at a time. The goal of the plan is to make sure entire projects are developed so that Lake Forest Park can become closer to its original habitat. She suggested that as the City considers future plans and developments, they should also consider an alternative vision for Shoreline that goes beyond just protecting the critical areas or creating buffers. She submitted a copy of the Lake Forest Park Community Wildlife Habitat Project document, which was identified as Exhibit 1.

Tim Crawford, 2326 North 155th Street, directed the Commission to the third paragraph on Page 23 of the Staff Report. He reported that he observed the Casper Remand Hearing a few weeks ago. He understands that there has been a lot of talk amongst the staff about conflicting and battling biologists. He clarified that the science that was produced by Adolphson and Associates is in continual direct conflict with best available science produced by the Washington State Fish and Wildlife. They have prevailed on this issue in court previously, and they will continue to prevail. Next, Mr. Crawford referred the Commission to Page 43 of the Staff Report (Section 20.80.270). He questioned why the City's best available science is in conflict with that of the Washington State Department of Fish and Wildlife, when they should be one and the same. He recalled that past problems with the City were created because staff did not follow the recommendations from the State and National Agencies. The City can continue to do this, but it will result in many situations before Superior Court. He said it is not going unnoticed that when Planning Commissioners leave their positions, they often end up taking advantage of the injustice they are doing to the environment.

Patty Crawford, 2326 North 155th Street, provided six handouts that were identified as Exhibits 2 through 7. She said she is concerned about the general direction of the proposed changes to the Critical Area Ordinance, which has a real wetland priority. She noted that with the new City Hall Project, the City has identified Echo Lake as a wetland. She referred to a court order related to the designation of Peverly Pond as a wetland, which indicates that the consultant's science and the Determination of Non-Significance were not upheld at the Superior Court Level. She referred to a list of materials which indicate that the proposed changes are heading in this same direction because they do not include a lot of stream information. At Mr. Stewart's request, she provided information outlining the difference between the flowing water of a stream and the still water of a pond, which she obtained from a 3rd grade biology book. If it is open water, it should be considered an open water pond of the United States. If it has vegetation in it, it should be considered a wetland. She concluded by stating that the staff is trying to twist around the definition for surface water. She explained that surface water should be defined by where it originated. If it comes from the sky, it should be considered surface water.

Jeralyn Hambly, 5721 – 181st Street Southwest, Lynnwood, said she is acting as the guardian for her brother who is living at the Fircrest School. She said she is interested in protecting creeks and lands in the City from a tribal aspect. She encouraged the Commissioners to carefully consider this issue before there is any Native American involvement.

6. STAFF REPORTS

Workshop Discussion on Critical area Ordinance Update

Mr. Torpey explained that this discussion is a continuation of the workshop of January 20th, when staff introduced the draft changes to the Critical Area Ordinance. Since that time, the staff has received a large number of comments from the Planning Commissioners, which were grouped into 69 different categories. He referred to the comment matrix that was included as part of the Staff Report, which identifies the draft code sections, the Planning Commission comments and the staff's response to each.

Mr. Stewart advised that there were a couple of additional comments that were not included as part of the matrix. He recalled that through discussions with Commissioner Hall and members of the Thornton Creek Alliance, it was suggested that the ordinance designate all wetlands, streams and their buffers as fish and wildlife habitat conservation areas. The functions and values of these resources and their buffers would not only include protection of the water or the wetland, but would also provide the critical habitat for fish and wildlife. This proposed change would address the concern raised by a number of people about how these conservation areas would be designated. He explained that if there are other areas in the City where there is documented presence of fish and wildlife, the City could further delineate those areas based on best available science after diligent review.

Mr. Stewart said a number of people indicated that they would like to see the maps that are referenced in the ordinance. He explained that the King County folio of critical areas, which the City is currently using, is a document that provides very generalized maps. But this has been augmented by the Stream and Wetland Inventory that was recently approved by the City Council in 2004. In addition, a Lidar image of the City identifies the topographic relief of the various areas of the City. There is a large canyon running west to east from the water, which is identified as the Boeing Creek Basin. Various

other features are also identified on the map, including the individual grading of the lots throughout the City. These maps point out how highly disturbed the City's landscape is. Mr. Torpey briefly explained the process that was used to collect the Lidar images, and Mr. Stewart pointed out that the Lidar images are very accurate when compared to other types of data that was previously available.

Mr. Stewart explained that using the Lidar images, staff classified the slopes into three different data sets. The green areas indicate properties that have less than 15 percent slope, the yellow areas identify properties that have between 15 and 40 percent slope, and the red areas identify properties with a slope of 40 percent or greater. The current Critical Area Ordinance regulates the red and yellow areas, and this would continue with the proposed language, as well. Mr. Stewart further explained that in addition to the Lidar images, staff has another set of data to identify the liquefaction characteristics of the soil. But this data set comes from the University of Washington and is considered to be imperfect at this time. Lastly, Mr. Stewart referred to the map that was prepared by using the Stream and Wetlands Inventory that was recently completed by the City. This map shows all of the open watercourses in green, as well as all of the wetlands. It also shows a buffer distance of 35 feet on each site of the watercourses and wetlands. He explained that 35 feet is the minimum buffer that is proposed under the revised Critical Area Ordinance. He noted that a future task is to classify all of the reaches by type of critical area.

Vice Chair Piro referred to the map that was prepared to identify the various watercourses in the City and questioned how this new map compares to the previous King County Map. Mr. Stewart answered that the new map provides much more detailed wetland data. It identifies not only where the watercourses are located, but also a great level of detail about the intrinsic invertebrate index, the surrounding land uses, the quality of the watercourses, how much they have been denigrated, etc. All of this additional information will aid the City in reaching conclusions about how each critical area should be classified. He emphasized his view that all data is imperfect, and it is important to recognize that each data set contains imperfections. The City's responsibility is to assess and identify the level of imperfection. He suggested that the stream data is probably 95 percent accurate or better, but some of the other data will have to be verified in the field. The City is currently reviewing permits in which wetland scientists hired by both the applicant and the City are debating and disputing wetland delineation.

Commissioner Hall expressed his belief that the map appears to represent the scope of the field study the City contracted, and does not include all streams that have been identified on the King County Inventory. Mr. Stewart concluded that it is important for the map to be as complete as possible. He stated that the maps should be considered a work in progress, and the public and the Commissioners should feel free to provide their comments and suggestions for change.

Commissioner Broili questioned if the streams identified on the new map include all stream types. Mr. Stewart answered that the stream and wetland inventory did not include the classification or typing of any of the watercourses, and it included only open watercourses. He recalled the previous debate about whether the City should distinguish between open watercourses and artificial watercourses. The Commission directed the staff to remove the word "artificial." The map includes all open watercourses without distinguish as to whether they run in a concrete drainage swale or in natural historic beds.

Mr. Stewart advised that staff would likely suggest an amendment that would remove the words "government dam." He recalled that a comment was made about discussions to remove the Boeing Creek Dam. Because these discussions are underway and there is a reasonable expectation that the removal could occur, staff presumes that the barrier to fish would be removed within six years. Therefore, the upstream classification of the watercourse would be changed.

Commissioner Hall applauded the staff's recommendation to designate streams and wetlands as fish and wildlife habitat conservation areas. However, he said he is still concerned that the proposed Critical Area Ordinance does nothing to deal with the shoreline of Puget Sound. He said he understands the legal distinction that shorelines of the State are protected through the Shoreline Master Program that was adopted under the Shoreline Management Act. But he referred to the recent house bill, which states that protection for critical areas that fall within the jurisdiction of shorelines in the State must be as least as strong of protection as that provided in the critical area ordinance. Since the City's ordinance does not protect Puget Sound at all, the field is left open. He said he would like the ordinance to include standards for protection of the Puget Sound shoreline as though there was no Shoreline Master Program. This would allow the Commission to consider environmental protection for all surface waters, while recognizing that the ultimate regulations applied would be the Shoreline Master Plan requirements.

Commissioner Sands suggested that the proposed Critical Area Ordinance simply reference the State Shoreline Master Plan regulations that apply to Puget Sound. Commissioner Hall pointed out that the Shoreline Management Act works similar to the Growth Management Act. The State does not actually adopt standards, but requires the individual jurisdictions to do so. The City must either address Puget Sound in the Critical Area Ordinance or in the Shoreline Master Plan. He concluded that it appears odd that the proposed Critical Area Ordinance does not even identify the Puget Sound shoreline as a fish and wildlife habitat conservation area.

Commissioner McClelland asked if the cities of Edmonds and Seattle include regulations related to Puget Sound in their critical area ordinance. She pointed out that there are currently residential properties and parks located along the Sound and questioned what type of protection Commissioner Hall would propose for these properties. Commissioner Hall suggested that, as a starting point, Puget Sound should be provided the same protection as those identified for streams. Commissioner McClelland pointed out that if Puget Sound were given a buffer, the public would not be able to access the water's edge. Commissioner Hall said he does not propose that the City deny public access to the shoreline, since the Shoreline Management Act identifies public access as one of its goals. Neither does the proposed Critical Area Ordinance propose that public access to the streams be denied. But where future development is proposed along the shoreline, conditions should be imposed for protection.

Commissioner McClelland said she recently listened to a speech provided by a wetland biologist, and he suggested that there are three issues that should be considered when reviewing a critical area ordinance: the protection of critical areas, the protection of private properties and the protection of government-owned properties. It is important that a critical area ordinance protect and balance all of these areas. She emphasized that the Commission should remember that the issue is far more complex than just protecting the environment.

Commissioner Broili indicated his support for Commissioner Hall's suggestion that the Puget Sound shoreline be addressed as part of the Critical Area Ordinance. He said he would like to consider the whole issue from a systemic watershed perspective, and he does now see how the City can separate the shoreline from the creeks, streams, wetlands, etc. A single stream should not be reviewed in isolation from the surrounding landscape and the connections that are inherent within a watershed perspective.

Commissioner Hall said the City of Edmonds' Critical Area Ordinance does recognize the shoreline of Puget Sound. He recalled that there are specific marine issues called out in State Law related to the protection of forage fish spawning, eelgrass, kelp, shellfish, etc. In addition, the Growth Management Act requires jurisdictions to give special consideration to anadromous fisheries. He questioned how the City could justify the protection of salmon in Thornton Creek but not along the Puget Sound shoreline.

Mr. Stewart agreed that Commissioner Hall's issue should be addressed further, and he asked Mr. Inghram to clarify how the shoreline issue could be integrated into the Critical Area Ordinance. He pointed out that most of the shoreline is already heavily armored by the railroad tracks or by residential uses. During times of very low tide, it is evident that the condition of the residential properties is widely varied, and there will be continuing maintenance issues in the future. He also noted that Salt Water Park is the best piece of shoreline the City owns. He referred to the areas where the streams discharge into the Sound, and noted that Boeing Creek has a great opportunity for future improvements. In addition, he noted that a series of critical areas are located on the east side of the railroad tracks, and issues and debates have taken place about the streams and wetlands that have formed to capture the water as it comes down the hill. The City's Critical Area Ordinance does regulate the critical areas on the east side of the tracks, but he agreed that the City should further contemplate ways to integrate protection for the west side, as well.

Commissioner Kuboi asked how the proposed ordinance would establish the buffers for the conservation areas and how this would be reconciled with the buffer table for streams. As an example, Mr. Stewart explained that staff is now suggesting that the fish and wildlife habitat conservation area definition be broadened to include all areas that are streams, wetlands and their buffers. This would not add a further buffer requirement on top of the existing buffer, but the edge of the buffer would delineate the conservation area. There would be two ways for properties to become a fish and wildlife habitat conservation area under the proposed amendment. One would be if the property were within a buffer area now. The other would be through best available science and additional formal delineation. Commissioner Kuboi pointed out that the buffer for the conservation area might end up being greater than what the stream table calls for. Mr. Stewart agreed, depending on the species, the uniqueness and other best available science. Commissioner Kuboi said the staff's proposed broader categorization of habitat conservation areas makes sense to him. Commissioner Hall concurred but said he would also like the Puget Sound shoreline to be included.

Commissioner Hall referred to Section 20.80.260 (Page 42 of the Staff Report), which states that the City would give special consideration to anadromous fish. In addition, Section 20.80.270.A (Page 43 of the Staff Report) states that one of the criteria for a fish and wildlife habitat conservation area is the "presence of species proposed or listed by the federal government or State of Washington as endangered, threatened, critical or priority." He said he couldn't imagine the City adopting an ordinance that says they do not have documented evidence of listed salmonids on the Puget Sound

shoreline that must be protected. Vice Chair Piro agreed and suggested that staff contact other surrounding jurisdictions such as Edmonds, Seattle, King County, etc. to find out how they regulate their Puget Sound shorelines.

Commissioner Kuboi restated a previous Commission request that staff somehow delineate the buffer areas on the maps. As if it is not already hard enough to delineate these buffer areas using stream tables that are relatively simple, the staff is proposing the infusion of the science driven process for determining the appropriate buffers for habitat conservation areas. He expressed his belief that the maps identifying the buffer areas will probably never be completely accurate. Therefore, the Commission will never have a clear understanding of what impacts the proposed changes would have on the community.

Mr. Stewart explained that best available science would be used to designate the habitat and the appropriate buffer, but then the City must balance the best available science with the other competing goals of the Growth Management Act. Commissioner Kuboi said it appears that the analysis of what an appropriate buffer would be for a particular habitat conservation area would be determined through a study conducted by the applicant of a proposed development. Mr. Stewart agreed. Commissioner Kuboi pointed out that an applicant could hire the services of a consultant to justify a smaller buffer than what the stream table calls for. Mr. Stewart reminded the Commission that best available science continue to evolve. He explained that the word "best" represents a value judgment that is debated depending on one's personal values, and "available" represents a resource question of how much money the City is willing to spend to complete studies, etc.

Mr. Stewart pointed out that the structure of the ordinance is such that the map represents only the approximate location of critical areas. Additional critical areas and their buffers may occur within the City even though they have not been previously mapped. When an application is submitted, the staff would use the map to help an applicant understand that there could be an issue with critical areas. But the specific location of a stream or wetland is often identified by the applicant during the permitting process. Surrounding property owners, who also hire scientists to study the issue, can challenge the location, as well.

Commissioner Kuboi noted that a table is provided in the ordinance to describe the mechanism for identifying stream and wetland buffers. Now they are introducing a process whereby a property owner or developer can purchase the credentials of a consultant to put together a report in support of having a habitat conservation buffer area that is less than what is called for in the stream table. This could result in a loophole for future developers to circumvent the buffer requirements. Commissioner Hall pointed out that the code provides explicit criteria that must be met in order for additional fish and wildlife habitat conservation areas to be designated. He recalled that in terms of buffer widths, City Attorney Sievers previously advised that science takes the City partway towards the appropriate decision, but not all the way. The City Attorney further advised that the City must also balance science with the protection of people, development, etc. Commissioner Hall said he does not believe a scientist would be able to turn the City's buffer requirements upside down. The City gets to decide the buffer requirements, and habitat conservation areas that are located within a stream or stream buffer would not require additional buffer area.

Mr. Stewart referred to Section 20.80.270 (Page 43 of the Staff Report) which states that certain criteria would have to be met in order to designate areas within the stream and wetland buffer areas as habitat conservation areas. Section 20.80.260 (Page 42 of the Staff Report) outlines how habitat conservation areas should be established, and Section 20.80.310 (Page 44 of the Staff Report) discusses the required buffers and how they should be established. He agreed with Commissioner Hall's suggestion that, in addition to this mechanism, all of the buffers for streams and wetlands should also be designated as fish and wildlife habitat conservation areas, but no additional buffer would be required around the conservation area.

Commissioner Hall noted that streams, by definition, are not a critical area under the Growth Management Act. Therefore, the only State statutory authority the City has to protect streams is to designate them as fish and wildlife habitat conservation areas. Mr. Stewart pointed out that the City has a long-standing policy in their Comprehensive Plan which states that streams shall be designated as critical areas to acknowledge that they provide habitat for certain fish species.

Commissioner Sands said he is still unclear about why staff is proposing the deletion of certain items in the original definition for critical areas. He specifically referred to terms such as "soils having high water tables" and "highly acidic soil." Mr. Inghram reminded the Commission that the goal of the proposed amendments is to make the critical area ordinance more consistent with the Growth Management Act and the structure of the City's Development Code. For example, he pointed out that neither the Growth Management Act nor the Development Code provides language related to the protection of "highly acidic soils."

Vice Chair Piro suggested that any editing of the critical areas ordinance should be supplemented by a description of why the changes are being proposed and what the practical implications would be. It is important to communicate this information to the public. Commissioner Sands agreed that if staff is proposing the elimination of certain elements of the existing ordinance, they should provide documentation about why the changes are being proposed. If the record is not clear, the intent of the changes could be challenged later in court.

Commissioner McClelland requested that staff provide a few examples of where the code has been effective in its implementation. She asked if there are examples of where the City's mandated critical area protections have actually made a difference to the environment. Mr. Stewart explained that most development projects are constrained by and typically removed from the critical areas and their buffers. The City has adopted buffer enhancement and wildlife habitat mitigation plans as part of permit approval, and staff could provide copies of some of these plans to the Commissioners for their review.

Commissioner McClelland recalled a previous Commission discussion about the need for a focused and well-intended public education program where the City would document some of the projects that have been completed to protect the environment and how these protections are connected to the entire ecological system of the City. She would like the City to use signs to plant thoughts into people's minds about environmental issues and concerns. Mr. Stewart advised that the City employs a full-time environmental educator, Rica Cecil. Her job is to provide environmental education, and the Shoreline Master Plan that is currently before the City Council for approval includes $4.2 million for habitat restoration.

Vice Chair Piro suggested that examples of comprehensive critical area stewardship plans would be of value to the Commission, as well. Mr. Stewart said the City has not completed any critical area stewardship plans to date. This concept is new and intended to be done in conjunction with view preservation and restoration. It is modeled after some of the plan exclusions in the King County ordinance for agriculture, etc. where they allow exceptions for certain activities. Vice Chair Piro again requested examples of these model provisions.

Commissioner Broili expressed his belief that the City should try to do more than just match what the Growth Management Act requires. They should strive, at every opportunity, to enhance and strengthen the City's environmental ethic with regard to critical areas, land development, and other issues the Planning Commission must address. Deleting items from the ordinance could negate the issue from being addressed in the future. Terms such as "acidic soils" and "high water tables" were included in the ordinance for a reason. Just because the City hasn't addressed these issues in their code up to this point, does not mean they should be taken out of the ordinance.

Commissioner Broili referred to Section 20.20.22.F (Page 26 of the Staff Report), which indicates that the term "flood plain" would be changed to "flood hazard areas." He argued that a flood plain is a systemic ecosystem, while a flood hazard area is people oriented. He would like the Commission to discuss this proposed change further. Finally, Commissioner Broili recalled a point he made previously that best available science depends on the questions being asked. He pointed out that the term "no net loss" is used frequently throughout the proposed ordinance, and to him, this means the City would be just treading water. The system is already badly degraded, development continues to happen and population continues to grow. The City's goal should be restorative rather than "no net loss." He encouraged the Commissioners to think in terms of strengthening and restoring the environment. He referred to the Lidar map which shows where the watersheds were originally located. He pointed out that the watersheds on the Lidar map are much more extensive that what is identified on the stream inventory map. Parts of the watershed system have been lost. While he is not suggesting that people be moved off their lands, the City has the design tools and technology to do a far better job of protecting the natural critical areas and the uplands that support and sustain them.

Commissioner Sands asked staff to review the regulations associated with tree removal and trimming in critical areas versus non-critical areas. He would like to have this tied in with the concept of stewardship plans, as briefly discussed earlier. He questioned if the stewardship program that has been identified for views and trees would also allow someone to thin a forested area for fire prevention. Mr. Stewart explained that the Comprehensive Plan that was adopted in 1998 included a policy that the City should adopt tree protection regulations. The 2000 Development Code adopted a section regarding development standards for clearing activities, which regulated the removal of trees and ground cover. These standards established two types of rules for removal of significant trees. One set of rules applies to those parcels that were not located in critical areas, and the second set applies to parcels that are located in critical areas or their buffers. Generally, an owner of property outside a critical area can remove up to six significant trees per parcel during any three-year period, and there is no limit on the number of non-significant trees that can be removed.

Mr. Stewart further explained that when a site that is located outside of a critical area is developed, the applicant is required to retain at least 20 percent of the significant trees on a site if a clearing and grading permit is obtained from the City. An applicant of a site that includes some critical areas and/or critical area buffers must retain a minimum of 30 percent of the significant trees on the site. The City requires an inventory of significant trees as part of a development permit application. The City uses this inventory to calculate the number of trees that must be retained.

Mr. Stewart said it is important to also understand that there are six exceptions associated with the tree removal regulations. The one that has been utilized by a number of citizens is the exemption for emergency situations. Any tree or vegetation that is an immediate threat to health, safety, welfare or property may be removed without first requiring a permit regardless of any other provisions contained in the code. If possible, the code requires that trees be evaluated prior to removal using the most recently adopted method identified by the International Society of Arbiculture. He noted that the Ennis Arden Reserve Group has utilized this provision to remove a large number of trees. He briefly reviewed the other exemptions that are listed in the code.

Commissioner Sands asked when tree trimming would be considered tree removal. Mr. Torpey referred to the Planning Director's interpretation that was issued in 2001 (Attachment 2 of the Staff Report). He explained that the International Society of Arbiculture defines trimming and topping. Topping is considered the same as removal of a tree, and trimming is limited to up to 30 percent of a tree's biomass. Anything more than that would be considered detrimental to the long-term health of the tree.

Mr. Stewart explained that the proposed language would add a provision to allow for the removal of up to six significant trees within a three-year period on properties that are located within a critical area if all of the functions and values of those trees can be preserved and enhanced.

Commissioner Sands summarized that there are no provisions for tree removal in non-critical areas to accommodate view preservation. Mr. Stewart stated that there are no exclusions that would distinguish between tree removal for view preservation and tree removal for any other purpose.

Mr. Torpey referred to the areas identified on the map as having a slope of 15 to 40 percent. He explained that, as per the draft ordinance, a property owner could apply for a clearing and grading permit (Type B) for these properties, but the City would require the applicant to provide professional reports from an arborists and a geotechnical engineer as to the stability of the soil during the tree removal and the replanting necessary to replace the function of the trees. These reports would be reviewed and either approved or denied by staff, and the staff's decision would be appealable by either the applicant or another person who may be affected. Mr. Torpey further explained that the current and draft ordinance would require a critical area reasonable use permit for tree removal in areas that have a slope of greater than 40 percent. If the property were owned by a utility or other public entity such as a water district, a critical areas special use permit would be required. In these situations, the staff would make a recommendation to the Hearing Examiner, who would make the final decision that is appealable to Superior Court.

Commissioner Sands clarified that all of the tree removal requirements would be triggered by the request for a permit. What if a property owner wants to remove a significant number of trees without

submitting a permit application? Mr. Torpey said that a clearing and grading permit would be required for the removal of any tree from a critical area unless it was considered a hazardous tree. Commissioner Sands said this provision makes it important for a property owner to understand whether or not a property is located in a critical area.

Commissioner Sands requested further information about the proposed "stewardship plan" concept. Mr. Stewart referred to Section 20.80.030 on Page 33 of the Staff Report, which would add a new exception to the list of regulated activities. It states that view preservation and enhancement programs may be permitted in critical areas and their buffers if a critical area stewardship plan is approved as part of a clearing and grading permit and can meet specific criteria. First, the plan must result in no net loss of the functions and values of each critical area. Second, the plan must maintain or enhance the natural hydrologic systems on the site. Third, the plan must maintain, enhance or restore native vegetation on the site. And fourth, the plan must maintain habitat for fish and wildlife on the site and enhance the existing habitat.

Mr. Stewart said the intent of the proposed language in Section 20.80.030 is to allow a stewardship plan to be developed that would protect the functions and values of a critical area while also allowing for preservation and enhancement of views. It would require the same type of study and assurances that are currently provided under a clearing and grading permit. It would further broaden the City's authority to move into areas that are not covered, including 40 percent slopes and the buffers of the streams and wetlands.

Vice Chair Piro clarified that the new language would allow six significant trees to be removed from a critical area without any rationale, but with an assessment that the removal would not result in any net loss in function and value. He requested feedback from staff about why they are recommending the new language. Mr. Stewart said there are situations in the City where uphill neighbors have won court cases against downhill neighbors, ordering the downhill neighbors to remove trees that are located in critical areas or critical area buffers. In these cases, even though the property owners do not want to remove the trees, the City is requiring them to apply for permits to do so. These property owners are also required to provide the City with scientific studies, etc. The proposed language is intended to address these situations. There are also situations where the City receives reports of trees being cut on private or common properties, and the staff investigates these situations and attempts to resolve the problems. In addition, the City has received 142 hazardous tree reports, and they have rejected about 40 of them. He concluded that the City has spent a lot of time and energy wrestling with this issue.

Mr. Stewart further clarified that the proposed language is intended to tighten the definition for a hazardous tree to focus in on the reasonableness of the hazard. Some would argue that any tree is hazardous because it could fall at any point. The proposed language further defines the definition to state that the hazard must have the potential to result in the loss of a major or minor structural component of the tree that would either damage personal or public property or prevent access in the case of medical hardship. This language was pulled directly out of the King County definition for a hazardous tree.

Commissioner McClelland asked if the City has designated any landmark trees. Mr. Stewart said the code includes a provision that allows the City to designate landmark tree, and a proposal was submitted

to the City. In this situation, the uphill neighbor was seeking to enforce covenants on the downhill neighbor, and the downhill neighbor or a friend nominated the tree as a landmark tree. He read the definition for a landmark tree and pointed out that once designated as a landmark tree, it can't be removed unless the applicant can meet the exception requirements of the section. He further said the language states that the Planning Director shall establish criteria and procedures for the designation of landmark trees, which he has done via an administrative order. The standard and criteria include a provision that the owner and all parties with an interest in the property rights must sign off on the landmark tree application. If a tree can meet the criteria for designation, the application would be sent to the City Council for final approval.

Vice Chair Piro concluded that the way the language is proposed, the only reason a property owner would be allowed to cut down more than six trees is for view preservation or enhancement. He expressed his concern that the proposed language (Section 20.50.360) would not allow a property owner to thin out trees for purposes related to the health of the forested area. If a certified arborist report indicates that the tree removal would not have any impact on the slope and that the remaining trees would be healthier, the ordinance should allow this to occur. Mr. Stewart clarified that this section only applies for critical areas that have a slope of more than 40 percent. For properties with a slope of less than 40 percent, a clearing and grading permit could be obtained to allow the removal to occur.

Commissioner Kuboi asked who would determine if a property owner is entitled to the view preservation and enhancement provisions. Mr. Stewart said that any property owner or group of property owners could apply for a permit to remove trees for view preservation or enhancement. He said the intent of the view preservation and enhancement provision is to limit the scope and how it could be applied. Protection of views is a competing value with protection of the critical areas. The City does not want to allow the removal of trees in critical areas for any circumstance, but only for view enhancement or preservation. He emphasized that the view preservation program could be applied any where in the City. Commissioner Kuboi noted that since view is not defined, a person could create his or her own definition of what a view is. He felt the proposed language could result in potential abuse in the future.

Vice Chair Piro questioned who would decide whether or not a tree or group of trees would constitute a fire hazard. Mr. Stewart recalled that there was an urban wildfire along the Interurban Trail at about 160th Street. Some low growing vegetation caught on fire and got up into the conifers. It was a spectacular sight that occurred after a particularly dry spell. During the City's recent evaluation process, urban wildfires were identified as a potential hazard to the City, particularly in those areas that are heavily wooded. He suggested that adding an exemption or provision related to urban wildfire hazard mitigation would be appropriate.

Vice Chair Piro agrees that the Growth Management Act was a revolution for Washington State. He said he would like to see more information about some of the cases that speak about its potential conflicts with the standing covenants that predate the Growth Management Act. He said it would also be helpful to receive information from the Growth Hearings Board about cases that deal with situations where a provision in a covenant had been trumped by the Growth Management requirements.

Mr. Stewart explained that 1000 Friends of Washington has appealed the comprehensive plans of Normandy Park, Issaquah and Kent because they have zoning provisions of less than four dwelling units

per acre. Mercer Island's plan will also be appealed once it is adopted. He said the issue for Shoreline is that there are restrictive covenants for Ennis Arden and The Highlands that prohibit development in densities of four units per acre, even though the zoning code would allow for this density. He said it is his understanding that there is a case at the Shoreline appellant court level challenging the density provisions on a particular piece of property. The case is claiming that these types of restrictions violate the Growth Management Act. There is also proposed legislation at both the house and the senate level clarifying the four dwelling units per acre requirement.

Commissioner Broili said that if the staff is going to create new language related to fire hazard issues, it is important to understand that a good fire management regime does not necessarily require the removal of trees. Instead, it should speak to removing fire ladders so that fires stay on the ground rather than crowning. At some point, they need to discuss the concept of having an urban forest management plan. This would allow the City to look at the issue holistically rather than lot-by-lot. He said there is a movement afoot in the broader regions of the area to think in these terms, and he encouraged the City to do the same.

Commissioner Hall asked if the public hearing in March would be based on the January 10th version of the Critical Area Ordinance or if adjustments would be made to the document first. Mr. Stewart suggested that no changes be made to the January 10th edition of the ordinance prior to the public hearing. However, it could be supplemented with the list of amendments that have been proposed. He noted that numerous copies of the ordinance have been sent out to citizens and groups, so it would be best to continue to use the original draft as the working copy for the public hearing.

Commissioner Broili voiced his concern that the Commission would not have an opportunity to completely review the draft ordinance prior to the public hearing, yet there are numerous issues the Commission still needs to discuss. Mr. Stewart said the document has been available to the public for review since January 10th, and the next step is to move into the public hearing process. Hopefully, they will receive numerous comments and suggested amendments from the public. The Commission will have an opportunity to deal with these comments as they move into their deliberations. Commissioner Broili pointed out that the ordinance is very intricate, and it was difficult for him to review it in just one week and come up with appropriate comments. The comments he provided were made after only a brief review, and were certainly not comprehensive. He sees the review process as going very slowly, but the timeline is actually quite constrained.

Mr. Torpey explained that the document the Commissioners received includes the complete version of Section 20.80, which is the critical areas section of the code. The document also included all other sections of the code that are being recommended for change. The definitions can be found in Section 20.20. The matrix that was provided identifies all of the sections of the code that were commented upon by Commissioners. Mr. Stewart suggested that if the Commissioners want to review the full context of the Critical Area Ordinance, they should have the entire Development Code available.

Commissioner Hall referred to the sections of the ordinance related to tree removal, and expressed his concern about the definition for a "hazardous tree." The words "immediate threat" were removed from the definition, and this could end up creating a loophole. Secondly, Commissioner Hall felt the Commission should further consider the option of including regulations related to Puget Sound in the

City's Critical Area Ordinance. Lastly, Commissioner Hall referred to Section 20.80.330 (Page 48 of the Staff Report). He expressed his concern that the legal construction and interpretation of this section is too confusing. He noted that Item 1 uses the words "may," which is not enforceable from a legal standpoint. Perhaps Item 1 should require an applicant to meet all of the conditions. Mr. Inghram said that the listed conditions may or may not apply in all cases. He suggested that rather than trying to create criteria that would apply to every case, the section could reference guidelines such as those prepared by the Puget Sound Action Team for low impact development. Commissioner Hall felt this would be appropriate as long as it is worded in a restrictive rather than a permissive manner. The staff agreed to work more on Section 20.80.330.

Commissioner McClelland suggested that the entire ordinance should be edited for readability. The document should first make it clear what the standards and requirements are, and then identify the opportunities for deviation. The remainder of the Commission agreed, as did the staff.

Mr. Stewart said another issue the Commission might want to consider is the future of water-based recreational activities on ponds or lakes. If a pond or lake has historically been used as a water-based recreation area for fishing, swimming, boating, beaches, etc., the Commission must consider whether or not the uses should be allowed within the buffer area. Staff's interpretation of the current ordinance does not allow this type of use, but the Commission could add it as an exclusion. Commissioner Hall said his interpretation of the ordinance is that passive, low-impact recreation uses such as swimming or walking would fall into the category of "other activities not mentioned above, which have a minimum impact." Mr. Stewart said it could be argued that these uses should be allowed to continue as pre-existing non-conforming situations if no changes are being proposed. But if changes are proposed, the current ordinance would no longer allow the recreational uses. He asked that the Commission provide direction to staff about whether or not this type of activity should be exempt from the buffer requirements. Mr. Torpey reported that the City of Seattle exempts all of their waterfront parks and public spaces as public facilities.

Mr. Torpey reconfirmed that the public hearing for the Critical Area Ordinance is scheduled to begin on March 17th.

7. REPORTS OF COMMITTEES AND COMMISSIONERS

Vice Chair Piro reported that he and Commissioner Hall attended a special meeting on February 10th with members of the City Council, Planning Commission and some community groups. One of the key issues raised was related to amendments to the Comprehensive Plan. Concern was expressed about whether past amendments actually strengthen previous policies or weakened them. He asked that staff carefully identify and express the intent of future proposed changes so the public has a clear understanding. Mr. Stewart agreed that a number of issues were identified where a simple clarification from staff would have removed much of the anxiety and fear.

Commissioner McClelland thanked the staff for organizing the Cottage Housing Tour on February 12th. She said the tour was beneficial because they were able to go inside the houses and meet some of the residents. They received excellent exposure to the construction materials, site issues, neighborhood issues, etc. Vice Chair Piro said he was puzzled at the amount of attention that was spent reviewing the

interior of the properties when the bulk of the public's concern was related to exterior issues such as parking and traffic impacts. He recalled a recurring concern from the surrounding communities about neighborhood degradation yet he noticed that some of the properties are now being rented out. Chair Harris recalled that the major concern expressed by surrounding property owners was that the properties would all be developed by an absentee landlord and rented out, and this has not occurred.

Commissioner Hall requested an update from Mr. Stewart regarding staffing vacancies and new hires. Mr. Stewart reported that the City Manager recently announced the hiring of an economic development manager, and the Planning Department has hired a new technical assistant who starts on March 3rd. In addition, Mr. MacCready has resigned to accept a new position as a planner for Snohomish County, and his position will be open for applications soon. The City's building official has also resigned, so they are recruiting applicants for this position, as well. They are also interviewing for an Aurora Corridor Planner project position.

Chair Harris announced that the Shoreline 10th Anniversary Committee is moving forward with plans for celebration. An impressive list of City accomplishments has been compiled, and they are in the process of creating a calendar that identifies community events that are scheduled throughout the year.

8. UNFINISHED BUSINESS

Planning Commission Retreat

Mr. Stewart recalled that staff recently distributed a document outlining options for the retreat. The Commission scheduled the retreat for March 10th starting at 6:00 p.m. Pizza would be served for dinner.

Commissioner Hall referred to the list of possible discussion topics and said he feels the most valuable topics would include the Planning Commission's role compared to the City Council's role, Planning Commission expectations, and how the Commissioners can work together more effectively as a group. The other items on the list could be discussed as workshop items at a normal Commission meeting. The remainder of the Commission concurred. Commissioner Kuboi suggested that Commissioners come to the retreat prepared to discuss their issues and concerns relate to each topic. The Commission continued to discuss ideas for how they could focus the retreat discussions on specific concerns and issues.

The Commissioners agreed to submit their written comments regarding each discussion topic to Commissioner Kuboi by February 24th. He agreed to compile the comments and forward them to each of the Commissioners prior to the retreat. The Commission felt this would enable them to narrow their discussions and resolve specific issues.

The Commission discussed whether or not it would be appropriate for the Commission to self-facilitate the retreat discussions. Mr. Stewart expressed his concern about a Commissioner acting as facilitator. Another option would be to find a City employee who has facilitation training to facilitate the actual retreat discussions as an independent and neutral party. He also suggested that perhaps three topics might be too many items to discuss in just one evening. He suggested that the topics be narrowed to just two. The Commission agreed to provide written comments on all three of the items previously identified, recognizing that they would discuss and resolve Item 4 (Planning Commission expectations)

first. They also agreed that staff should find a City employee to facilitate the retreat discussions. Mr. Stewart said he would also invite all of the staff members who work on Planning Commission business to participate in the discussion.

9. NEW BUSINESS

There was no new business scheduled on the agenda.

10. ANNOUNCEMENTS

Mr. Stewart reported that the City Council received over 600 individual comments related to the Comprehensive Plan amendments. They have reviewed 130 of them and identified 50 for further discussion. They still have to review the more than 450 remaining comments. A second public hearing was held by the City Council, where they heard many of the same comments that have been expressed previously. In addition, the Innis Arden Neighborhood Group came forward with their concern that they did not receive notice of the meeting the City Council held with the Sno-King Environmental Council. They requested a special meeting with the City Council, as well. He said he is not optimistic that the plan will be adopted by February 28th, as originally planned. The Commission briefly reviewed the Comprehensive Plan public hearings that have been conducted by the City Council to date.

Mr. Stewart reported that Commissioner McClelland provided information regarding CTED's interpretation of the 2004-2005 Comprehensive Plan update. Commissioner McClelland said she obtained the opinion from the City of Carnation because they are still working on their 2004 update, too. CTED has taken the position, which is not a legal position, that if cities adopt their 2004 amendments early enough in 2005 and their 2005 docket has been established, they can still make amendments in 2005. Phil Olbrechts, the City Attorney, agreed with this interpretation. Mr. Stewart said staff is seeking their own interpretation from CTED regarding this issue.

Commissioner Hall expressed his concern that the Planning Commission not take any action that would distract the City Council from consummating the significant Comprehensive Plan update that is currently on the table. Mr. Stewart said his interpretation is that the 2005 amendments would not be approved prior to the 2004 update being approved. However, it is possible that approval of the updates from both 2004 and 2005 could occur at the same time. Commissioner Hall expressed his concern about the Commission holding public hearings and deliberations on proposed 2005 Comprehensive Plan amendments prior to final adoption of the 2004 Comprehensive Plan update. He felt the Commission has an obligation to defend the public's trust, and he would not support a staff recommendation to roll the site-specific Comprehensive Plan amendment for the south side of Echo Lake into the major 2004 Comprehensive Plan update. Commissioner McClelland agreed that rolling a 2005 docket issue into the 2004 update could be dangerous, and she would not support a proposal of this type, either.

11. AGENDA FOR NEXT MEETING

The Commissioners had no additional comments to make regarding the agenda for the next meeting.

12. ADJOURNMENT

The meeting was adjourned at 10:40 p.m.

_____	_____
David Harris	Jessica Simulcik
Chair, Planning Commission	Clerk, Planning Commission

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DRAFT

These Minutes Subject to
March 17th Approval

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION
SUMMARY MINUTES OF REGULAR MEETING

March 3, 2005 Shoreline Conference Center
7:00 P.M. Board Room

PRESENT
Chair Harris
Vice Chair Piro
Commissioner McClelland
Commissioner Kuboi
Commissioner Phisuthikul
Commissioner MacCully
Commissioner Sands
Commissioner Hall
Commissioner Broili

STAFF PRESENT
Tim Stewart, Director, Planning & Development Services
Dave Pyle, Planner I, Planning & Development Services
Ian Sievers, City Attorney
Jessica Simulcik, Planning Commission Clerk

1. CALL TO ORDER

The regular meeting was called to order at 7:03 p.m. by Chair Harris, who presided.

2. ROLL CALL

Upon roll call by the Commission Clerk, the following Commissioners were present: Chair Harris, Vice Chair Piro, Commissioners McClelland, Kuboi, Phisuthikul, MacCully, Sands, Hall and Broili.

3. APPROVAL OF AGENDA

Chair Harris pointed out that, at this time, the Commission is required to end their meetings no later than 10 p.m., so that staff can clean up the materials and clear the building by 10:30 p.m. Also, Chair Harris announced that the SEPA Determination for the Echo Lake site-specific Comprehensive Plan amendment (Agenda Item 6.iv) and concurrent contract rezone was appealed. Therefore, the public hearing on the application was postponed to a later date. A notice of the rescheduled public hearing would be published, posted and mailed to the parties of record and property owners within 500 feet of the site. He concluded that the Commission would proceed with public hearings on the other three site-

specific Comprehensive Plan amendments and rezones. However, they would wait to issue a recommendation on all four Comprehensive Plan amendments and rezones until after the rescheduled hearing on the Echo Lake site has taken place.

The remainder of the agenda was approved as written.

4. APPROVAL OF MINUTES

The minutes from the February 5, 2005 meeting were approved as amended.

5. GENERAL PUBLIC COMMENT

Chair Harris explained that during this portion of the meeting, the Commission would not accept testimony from the public regarding the Echo Lake Comprehensive Plan Amendment or any of the other three quasi-judicial hearings scheduled for later on the agenda.

Gini Paulsen, 16238 – 12th Northeast, advised that she is a sociologist by profession. She reported that two forums were held during the past week at which an environmental engineer Tom Holts made a presentation on "Zero Impact Development." Commissioner Broili attended this presentation, as well. She explained that zero impact development puts the environment first by using techniques and strategies to minimize the impact on the environment during any kind of development. These strategies include using permeable surfaces to minimize runoff and to protect, enhance, and restore streams. She said she would like Shoreline to be a model city by prescriptively requiring zero impact development for all future projects in the City.

Ms. Paulsen further reported that on March 2nd she attended a town hall meeting, which is the first one in the area where panels of speakers were present to talk about a crucial issue to the City. She said she was surprised that none of the Commissioners were in attendance. She said that in sociology there is a theory called "rational choice." This theory is based on gathering information and hearing the information. The Commission cannot learn and hear adequate information unless they attend the available events. The rational choice theory also means that preconceived ideas must be set aside when making an evaluation of various kinds of alternatives. She asked that the Commissioners pay attention to the information that has been provided since it is valuable and will bear on decisions they will be required to make.

Janet Way, 940 Northeast 147th Street, said she was present to speak on behalf of the Thornton Creek Legal Defense Fund, the Sno-King Environmental Council, and the Echo Park Group. She expressed her opinion that the City should not have scheduled a public hearing on the Echo Lake Comprehensive Plan amendment before the appeal period was finished. This has resulted in an inconvenient situation for the public who came to talk about the issue only to learn that it had been postponed. She asked that she be allowed to distribute copies of the SEPA appeal letter that is now part of the public record. City Attorney Sievers explained that, although the appeal letter is part of the public record, it would not be appropriate to distribute it since the Planning Commission is not ready to begin the quasi-judicial hearing on the matter. Ms. Way continued her comments by attempting to point out some of the issues

her group raised earlier about the public process for the Echo Lake proposal. Chair Harris pointed out that Ms. Way's remarks were inappropriate at this time, since the public hearing on the Echo Lake application was postponed to a later date. Again, he reminded the public that the Commission would not take public testimony on the Echo Lake proposal at this time. Ms. Way said she believes the public deserves an explanation about what is going on.

Mr. Stewart reviewed that the items listed on the Commission's agenda for public hearings are the four items that have been docketed for the 2004/2005 annual review of the Comprehensive Plan. Policy LU-7 encourages the City Council to annually review the Comprehensive Plan for updates. The City received four specific proposals to amend the land use plan. The public hearing was originally scheduled for all four of the items, but the SEPA Determination on one of the items was appealed recently. This means that the SEPA appeal would have to be heard by the Hearing Examiner at the same time the Commission hears the proposed Comprehensive Plan amendment and site-specific rezone application, which is a quasi-judicial process. He reminded the Commission that State law only allows the City to conduct one public hearing on any development permit application.

Mr. Sievers further explained that in rezone application situations, the City Council holds a closed-record hearing, and the pre-decisional recommendation made by the Planning Commission constitutes the open record hearing. Only one open record hearing is allowed, and in cases of appeal, the appeal hearing must be consolidated with the rezone hearing. The Hearing Examiner would sit with the Planning Commission for the open record hearing to hear issues related to the SEPA appeal while the Planning Commission accepts public testimony on the actual rezone application. He said he would assume there would be a gap between the public hearing and the Planning Commission deliberations to allow the Hearing Examiner to issue a decision on the SEPA appeal since the SEPA Determination should be completed before the Commission makes their recommendation. He said he expects that the open record hearing for the Echo Lake proposal would be scheduled sometime within the next month.

Commissioner Hall said that as part of Agenda Item 9 (New Business), he would propose that the Commission add to a future agenda a discussion of the advantages and disadvantages of noticing a hearing prior to a SEPA deadline.

Mr. Stewart explained that State law allows the City to update their Comprehensive Plan only once per year. When the City Council extended its public participation process for the major 2004 update, they anticipated that they would complete their work by the end of February. However, they have only reviewed about 40 percent of the policies, and they still have to review the capital facilities element and all of the master plans, too. It is very likely the Council's review process would go on for some time. In the meantime, the 2005 Comprehensive Plan review is getting started. Staff would discuss this issue with the City Council and keep the Commission apprised of how the timing issues would be resolved.

6. STAFF REPORTS

File #201371: North 160th and Fremont Place Site-Specific Comprehensive Plan Amendment and Rezone

Chair Harris reviewed the rules and procedures for the public hearing process. He reviewed the Appearance of Fairness rules and requested that Commissioners disclose any ex-parte communications regarding File #201371. He offered an opportunity for members of the audience to raise their concerns regarding the appearance of fairness, but no one stepped forward.

Commissioner MacCully disclosed that he spoke with the developer of the property identified as File #201371, who happens to be his friend. He met with him and visited the property. City Attorney Sievers suggested that Commissioner MacCully identify the substance of his conversations for the record. Commissioner MacCully said that when he visited the property, the developer described the features of the property and the process he had gone through to acquire it. He walked around the property, but didn't discuss anything specific other than the number of units the developer is considering for the property and why he made the decision to develop fewer units than would normally be allowed. They also talked about the street dead ending at the property, and the developer indicated that it is unlikely it would ever be put through. City Attorney Sievers said he would classify Commissioner MacCully's activities as a site visit. Since he disclosed the topics that were discussed, there should not be an appearance of fairness issue.

Mr. Pyle reviewed the staff report for File #201371. He said the proposed action is an amendment to change the Comprehensive Plan land use designation from low-density residential to high-density residential. It includes a concurrent rezone proposal to change the property from R-6 to R-24. He pointed out that the area is surrounded by three different neighborhoods: an R-6 neighborhood to the northwest, an R-18 neighborhood to the northeast, and a regional business or commercial area to the south. He provided a map to illustrate the extent of the higher density developments to the northeast of the site and noted that the access is not shared by the low-density R-6 zone to the west. He provided pictures to further illustrate the subject and surrounding properties.

Mr. Pyle advised that five letters of public comment were received by the City. The concerns were as follows:

- **Renters versus owners and apartments versus condominium.** Mr. Pyle explained that the City does not govern the ownership status of buildings and units. Any development on this site would be consistent with the high-density buildings that are adjacent and to the northeast. The majority of the comments were received from people who live in buildings that actually have a high number of rental units.

- **There could be up to a 30-percent increase in traffic.** Mr. Pyle advised that, as per the Shoreline Development Code requirement, staff used the Institute of Transportation Engineer (ITE) Trip Generation Manual to determine the potential amount of P.M. peak hour vehicle trips. The

estimation was that the vehicle trips would not exceed five, and a traffic study would only be required if the additional trips would exceed 20.

- **Loss of the greenbelt.** Mr. Pyle pointed out that there is no greenbelt located near or adjacent to the subject project. Currently, Fremont Place is an unimproved section of right-of-way that has not been paved. At any point, this right-of-way could be paved, but it would be up to the City's Public Works Department. He also noted that the site, itself, is not a greenbelt. It is simply a vacant parcel that can be developed at any time under the R-6 zoning.

- **Noise.** Mr. Pyle advised that no project proposal has been submitted for the site yet. He pointed out that any future project would be required to comply with the Development Code regulations regarding landscaping, tree retention and tree replanting. In the past, the City has found these regulations to be sufficient for developments of this type.

- **Increases in stormwater.** Mr. Pyle pointed out that the proposal is a non-project action, so the City has not yet received a project proposal. However, he spoke with the stormwater engineer, who indicated that any future development would require a type II detention facility on the site.

Mr. Pyle reviewed the staff's conclusions as follows:

- **Consistency:** The proposed site-specific Comprehensive Plan amendment and concurrent rezone is consistent with the Washington State Growth Management Act, King County Countywide Planning Policies, the City of Shoreline 1998 adopted Comprehensive Plan, the November 2004 Planning Commission recommended draft Comprehensive Plan, and the Shoreline Development Code.

- **Compatibility:** The proposed zoning is consistent with the proposed changes in land use designation, as identified in the site-specific Comprehensive Plan amendment.

- **Housing/Employment Targets:** The proposed action would improve the City's ability to meet housing or employment targets as established by King County to meet requirements of the Growth Management Act.

- **Environmental Review:** The project has satisfied the requirements of the State Environmental Policy Act (SEPA).

Based on the findings outlined in the staff report, Mr. Pyle said staff recommends approval of Application #201371 – a site-specific Comprehensive Plan amendment and rezone.

Commissioner McClelland inquired if the stand of trees located on the ridge would have to be removed. Mr. Pyle said this would be part of a project action. He referred to the attachment in the staff report that spoke to a 15-foot linear separation from the adjacent R-6 zone (Page 111). He explained that the applicant would be required to maintain 20 percent of the trees, with replanting for any significant trees removed beyond six. It could potentially be in the developer's best interest to retain the trees within the 15-foot linear separation.

Commissioner McClelland referred to the graphs that were provided in the staff report to illustrate the ITE Manual traffic generation information. The staff report indicates the proposal would generate nine trips during the peak period. Mr. Pyle clarified that the maximum number of additional trips would actually be seven. Commissioner McClelland requested information about the current number of P.M. peak trips coming from the existing condominium projects in the area. She asked if the additional nine trips would push the number of total trips into a situation that would require further review. Mr. Pyle answered that there are two condominium complexes with about 37 units each. Another townhouse development provides 57 units. When comparing the proposed change to the 130 units that are already utilizing Fremont Place as an access drive, the potential four additional units that could be built on the subject property would be relatively insignificant in comparison.

Lee Michaelis, Puget Sound Planning, 19817 Sunnyside Drive North, #5204, said he is acting as agent for the applicant. He referred to the site photograph (top left) that was taken from Evanston Street. He noted that it is difficult to see anything through the trees, which act as a natural buffer. Next, he referred to a photograph that illustrates the three-story condominium project that is located across the street from the subject property. Because there is a parking garage on the bottom level, the building is actually four stories. A project on the subject property would most likely only be three stories tall so the new building could act as a transitional development.

Mr. Michaelis recalled that the staff report indicated that five peak hour trips would be generated by the proposal. He summarized the traffic impact associated with the proposed change by explaining that with the assumption of a 50/50 split coming out of Fremont Place, there would only be 2½ vehicles going to the east and 2½ to the west. He noted that there would be no trips going down Evanston Street since it is a cul-de-sac. Once the traffic splits at Dayton, there would be one car going north and one going south. He concluded that the proposal is concurrent with the level of service at the nearby intersection.

Regarding noise, Mr. Michaelis said he does not believe the noise generated by a three or four-unit development on the subject property would be any greater than the 37 units next door or the cul-de-sac with five or six units. Therefore, he questioned whether there would even be a noise issue.

Mr. Michaelis agreed with Mr. Pyle that there is a 15-foot buffer requirement on the west property line, and anything that currently exists within that buffer would be retained unless the City requires that utilities come off 160th Street. At this time, the intent is to leave the buffer as is.

Mr. Michaelis said that, at this time, it is the developer's intention to develop owner-occupied units that would be sold to individual owners. Once the units are sold, however, the situation would be out of the developer and City's control as to whether the units would be owner occupied or rented out. This is similar to any other single-family or multi-family project in the City.

Mr. Michaelis recalled that Mr. Pyle clearly explained that Fremont Place is unimproved right-of-way. In the future, the City could definitely improve this property as a through way. Therefore, greenbelt is probably not the appropriate title.

Mr. Michaelis said that the stormwater plan for any development on the subject property would be tied into the existing City system. There is impervious surface to the north, so there must be catch basins and existing facilities for them to hook into. Stormwater would not be dumped into the area that has been referred to by citizens as the "greenbelt."

Mr. Michaelis asked that the Planning Commission forward a recommendation of approval to the City Council on the amendment and rezone applications as presented.

Commissioner Kuboi said that one of the written comments received from the public implied that there was a project description provided at a pre-application meeting in December. Mr. Pyle said that at the December meeting, a map was shown of a tri-plex structure. This map was incorrect and should not have been provided at that point. If the rezone is approved as proposed, the property could be developed with up to four units. He clarified that, at the time of application, there was no project description.

Commissioner Phisuthikul asked how the applicant arrived at his request for R-24 zoning, rather than R-18, which is the existing zoning for the adjacent properties. Mr. Michaelis said that R-18 zoning would not produce the number of units necessary for the project to pencil out economically. Commissioner Phisuthikul inquired how many units would be allowed if the zoning were changed to R-18 instead of R-24. Mr. Michaelis answered that if the property were rezoned to R-18, three units could be developed on the site. An R-24 zoning designation would allow four. Commissioner Phisuthikul asked if the applicant has already established that R-18 zoning would not make economic sense. Mr. Michaelis answered that this has not been established yet. He emphasized that, at the time of application, no unit count was proposed.

Dennis Jones, 700 – 160th North, #A205, said he is a resident of Forest Villa 1, which is part of a cluster of multi-residential units. He corrected previous statements by saying that in their development, there are only five rental units, and he would suppose the same percentage exists in the other condominium developments in the area. He noted that the condominium laws state that rental units cannot exceed 40 percent. Mr. Jones questioned the type of landlord the applicant would be. For example, has he received a lot of public complaints? If so, have they been addressed?

Mr. Jones expressed his concern that the objective of the proposal seems to change all the time. The applicant wants to go from a low-density development to a high-density development. He said that when he first started looking for a condominium, he couldn't get the developers to provide a defined answer on how well their homeowner's association would work. He also suggested there could be a concern related to conflict of interest, but he didn't offer any details on the record to support this concern.

Janet Way, 940 Northeast 147th Street, said she represents the Sno-King Environmental Council and Echo Park Group and has visited the subject property. She suggested that not all of the necessary information has been disclosed to the Commission. For instance, she noted that there is a greenbelt on the subject property along the right-of-way that is full of plant life and serves as a local walkway for the neighborhood. It also provides some habitat, even though the staff report indicates that there are no

wildlife issues. She referred to the City's stream inventory for Boeing Creek, and noted that Boeing Creek runs right along the greenbelt. She noted that at the apex of the triangle, it is possible to hear Boeing Creek running hard and fast under the manhole cover, even on a dry day. Ms. Way said it has been well documented that Boeing Creek suffers from a huge amount of water quality, water quantity and sediment issues downstream. It has also been well documented that Boeing Creek is a Class II Stream for Coho and Chinook Salmon. Upstream from the site is Darnell Park where the creek is open and unpiped. She suggested that the section of the creek that runs along the subject property within the greenbelt should be daylighted, as well. Otherwise, the City would be neglecting a perfect opportunity. Not only would the proposed project impact the creek, but the Aurora Corridor Project would impact the creek, as well.

Ms. Way said the trees that are located along the greenbelt serve an important purpose in preventing runoff. She referred to the meeting referenced by Ms. Paulsen earlier at which Tom Holts commented on the enormous amount of stormwater that is held by trees such as conifers, etc. Up to 50 percent of the water that falls on them never hits the ground. The trees on the site are not only important as a buffer for the neighboring properties, but they also serve an important stormwater function. If any of them are removed, they should be replaced with equal value trees. Also, all the trees that run along the greenbelt serve as habitat. She summarized that none of the issues she raised were evaluated in the staff report.

Ms. Way expressed her belief that holding the public hearing for this rezone application separate from the rezone application for Echo Lake is a piecemeal process, which is not an effective way to show the impact of all of the Comprehensive Plan amendments together. They will have an impact as a group, which is why they are being grouped together for review. This type of piecemeal process is confusing to the public.

Chair Harris said Ms. Way inferred that the Planning Commissioners had not visited the subject property. He clarified that he has visited the site, as have many of the other Commissioners.

Pat Crawford, 2326 North 155th Street, recommended that the property remain as R-6 rather than being rezoned to R-24. She said this is a good example of a piece of property that should remain as it is because of the sensitive features on the site. She asked that the Planning Commissioners keep in mind that with the curbing and other features of the Aurora Corridor Project, there will be a lot more stormwater directed towards Boeing Creek. The experts have said there is already poor drainage potential, and more units would further increase the problem. This is a good reason to retain the R-6 zoning designation for the subject property.

Ms. Crawford recalled that at the last meeting she provided the Commissioners with copies of a court decision from Judge Sharon Armstrong. She indicated that the pipe could potentially be illegal and have to come out at some point in the future. This type of thing is happening throughout the City. The existing pipe is failing. The Department of Fish and Wildlife will not grant hydraulic permits for the old pipes, and that is why they are opening the pipe out of Ronald Bog. The City must consider the future and address these situations. She expressed her concern with the Determination of Non-significance that was issued for the property since the City knows there is a stormwater problem and adding multiple

units would increase it. She said she is also concerned that the ten-page EIS only deals with land use issues, and there is no information to illustrate how the proposal would address environmental elements.

Ms. Crawford said it is important for the Commission to remember that meeting the Growth Management Act goals must be accompanied by the critical areas requirements. The City should not throw out their critical areas within the urban areas in order to accommodate additional growth. They should respect the critical areas and acknowledge them in the EIS.

Nadra Burns said she owns a condominium in the development that is located behind the subject property. She expressed her concern that rezoning the property to anything higher than R-6 would result in a decrease to the surrounding property values. The rezone proposal would result in an increase of traffic, an increase of noise as a result of the additional traffic, and a decrease in habitat. She reported that there are currently birds nesting in the trees in and around the greenbelt. In addition, she expressed her opinion that the proposed change would result in a decrease in surrounding property values due to the possibility of rentals being built. There could also be an increase in crime as a result of more vehicles and people. She said that if more than one unit is built on the site, there would be very little space for parking. If a maximum of four families were to live on the subject property, there must be a minimum of four parking spaces to accommodate only one car per family. Any visitors would have to park on the street or in the guest spaces provided by surrounding properties.

Ms. Burns concluded that if the greenbelt were eliminated, the homes behind the subject property would be impacted. If the greenbelt is maintained, she questioned where the parking would be located. She further concluded that there would be an increase in traffic, and as a result, there would also be an increase in noise. She said she does not see how four units would fit onto a 7,900 square foot lot without causing overload. Ms. Burns said her understanding is that 80 percent of the units in her building are owned, and only 20 percent are rentals.

David Patten, 615 North 161st Place, said he owns property located to the west of the subject property and is favor of the proposed development. He expressed his concern that the development would result in multiple driveways along 160th Street, making it difficult to provide sidewalk and wheelchair access to Aurora Avenue. He suggested that the driveway access be provided in another location.

Deborah Ellis, 700 North 160th Street, A212, said she is also speaking on behalf of Jennifer Jasper in A303 who was unable to attend the meeting. She referred to a comment made earlier by Mr. Pyle concerning the number of owner occupied versus rental units in the existing condominiums. She said there are 39 units in her building, and at this time, only two are rentals.

Ms. Ellis pointed out that the majority of the existing trees are not located within the 15-foot setback buffer. Therefore, it is likely that they would be taken down and replaced with lower growing trees and shrubs. She questioned the need for the rezone to allow four townhouses on the site versus a single-family dwelling other than for profitability. She said it appears there would only be two parking spaces for each of the units, with some street parking. She requested more information about the proposed plans for parking. If street parking were allowed, it would create visibility issues for the people coming

out of her building. She concluded by stating her belief that increasing the density from one unit to four would increase traffic and noise no matter what the staff report shows.

Kristie Magee, 700 North 160th Street, #A306, presented a letter from her neighbor that was entered as Exhibit 1. She said her concerns reflect those of previous speakers. Her big concern is about the decrease in property value and quality of life that would result from the proposed change. She particularly expressed that noise would increase, especially since the units would apparently be turned into rental properties. She noted that the majority of the existing condominiums in the area are owner occupied, which eliminates many of the issues typically associated with rental units. She asked the Commission to think about what typically happens several years down the road when rental units become run down and the turn over rate increases. Because there is no pride in ownership, the values of the surrounding properties and the quality of life tend to go down.

Ms. Magee referred staff's statement that any development would be consistent to what is located east of the art building. She suggested, instead, that any development on the property should be consistent with properties to the west, which are single-family homes.

Les Nelson, 15340 Stone Avenue North, said his home is located behind the Safeway at 155th Street, and he recalled that Safeway was required to put in a 15-foot buffer area. However, Seattle City Light would not allow the taller trees. Many of the plants that were installed died, and the City has not required Safeway to replace them. He noted that the buffer of trees that exists along the subject property line is about 30 or 40 feet. While Mr. Pyle showed how the tree line obscures the view of people to west, it is important to note that most of these trees would be removed to accommodate the utility easements. In addition, if the buffer zone were only 15 feet in width, the trees that are planted would not be tall enough to obscure the view.

Gini Paulsen, 16238 – 12th Northeast, recalled that several weeks ago she toured some of the streams identified on City maps. She noted that within the triangle where development is being planned there is a manhole cover with an orange mark on it. Under the manhole is a stream. As she walked through the greenbelt, she found additional manhole covers with orange markings and she could hear the stream (Boeing Creek) running underneath. Next, she went to Darnell Park, which is an upper tributary of Boeing Creek. While Boeing Creek in this location is not very large, it is very clear and very beautiful. If the City is going to use "zero impact development" as a model for containing, preserving, enhancing and restoring the environment, they must keep in mind that Boeing Creek feeds into the Sound, which they already know has been killed off. She urged them to keep preservation of the environment in mind and make sure that Boeing Creek is daylighted, not only in this location, but also through Darnell Park.

Ralph Syversen, 621 North 161st Place, said he has lived in the neighborhood for a long time, and has never seen a Boeing Creek in the greenbelt, but there has always been a lot of water under the manhole cover. He said he lives in the house just adjoining the subject property to the west, and their access is off of 161st Place. He reported that several years ago, he decided to subdivide his property to make two single-family lots since there was adequate separation from the more intense surrounding uses. It never occurred to him that the City would consider breaking their zoning designations to change from single-family zoning to multi-family zoning. While they may save some of the 15-foot buffer, if an apartment

is built on the subject property, his property would be directly impacted because they would have to look down on the roof of the new building. He suggested that the proposal represents an improper use of the property, and the rezone application should be denied.

Tim Crawford, 2326 North 155th Street, referred to the "project review" section of the application, which states that the King County Surface Water Design Manual was used. However, he pointed out that the City's Surface Water Master Plan states that the 1994 Puget Sound Water Quality Manual must be used. He questioned which manual was used by the City to review the application. Mr. Crawford expressed that it is important to save the buffer and not encroach into the creek.

Gloria Bryce, 708 North 161st Place, said she lives in the first set of town houses located next to the subject property. She said there are not very many people from the town house units who use Fremont Place for access. She said she is concerned about the noise the additional cars would create. She also expressed her concern about the loss of trees, because they really do enhance the neighborhood. She said she moved into her unit in 1980, at which point the two large buildings were not constructed yet. When they were constructed, they were used as rental units for several years and then converted to condominiums. Even if the new units are built as rental units, they could be converted to condominiums in the future, as well. Therefore, she suggested that the Commission should not focus on the negative aspect of the units being used as rental units. She said people have moved to her building because of the trees. When her building was constructed, as many trees as possible were saved. She said she is opposed to a rezone of the subject property to R-24. An R-18 zoning designation would allow more trees to be saved to enhance the neighborhood.

Corrie Ruderbush, 16103 Evanston Avenue North, said her biggest concern is the view impact to her home. She currently looks out over the trees and doesn't want to see a big building constructed behind her home. She said she is a biologist and loves to observe the wildlife in the greenbelt area. Just last week she saw an eagle fly over the condominiums. She concluded that a lot of wildlife uses the area. She pointed out that Boeing Creek already has a lot of sediment and erosion problems, and she does not support the higher density that is being proposed.

Jan Moberly, 720 North 161st Place, expressed her concern that the proposed change would result in development that utilizes on-street parking. She said she is amazed at the difference that the Shoreline Community College cosmetology school has caused to Linden Avenue. The visibility coming out of their complex onto Linden is much worse now. She worries that the same problem could result if the proposed change were approved.

Mr. Michaelis referred to comments made about the percentage of rentals units on the surrounding properties. He specifically noted that several citizens indicated that only about 25 percent of the units in their buildings were used as rentals. If this same percentage were applied to the subject property, it would result in only one rental unit out of the four that are proposed.

Mr. Michaelis referred to the question raised by Mr. Jones about the type of landlord the property would have. He explained that once the units are sold, the developer would not have any control over who the landlord would be. The developer does not intend to be the landlord. He is proposing to build four

town homes that would be sold. He said he is not sure what Mr. Jones' reference to conflict of interest was related to.

Mr. Michaelis disagreed with Ms. Way's definition for a greenbelt, and questioned if a right-of-way would fit within the City's definition of a greenbelt. He pointed out that the application went through the SEPA process, which is intended to review for environmental issues. A decision was issued, and no appeal was filed. Therefore, he assumes the application complies with the decision and should be able to move forward. Also, Mr. Michaelis said it is important that this project not be associated with the Aurora Corridor Project. It should be considered a stand-alone application that is reviewed based on its own merit.

Regarding property values, Mr. Michaelis said he has not seen any concrete evidence to support the citizens' claim that property values would go down. However, typically, once land is improved, the property values go up. He also does not understand where the assumption of increased crime would come into play. If the existing larger developments do not create increase criminal activity, he questioned how just four units would make a significant difference. He assumed this comment was made without facts.

Mr. Michaelis questioned the relevance of court decisions that are not related to the project. He asked staff if any legal land use court decisions had been issued on the proposed project outside the realm of the current procedures. Mr. Stewart answered that Ms. Way was referring to another court case on the other side of town that had to do with pipes. Mr. Michaelis inquired if this court decision would be applicable to the subject application, and Mr. Stewart answered that it would not.

Mr. Michaelis recalled earlier public comments regarding the Growth Management Act requirements and noted that SEPA is part of the Growth Management Act process. Again, he said a SEPA review has been completed for the project, and no appeals or comments were received. Therefore, the project should be allowed to move forward with no further comment on the SEPA Determination.

Mr. Michaelis advised that the City would require two parking spaces per unit, which would mean eight, on-site parking spaces. It is up to the City to decide if they want to allow on-street parking on Fremont Place, as well. The proposal does not include on-street parking at this time. However, if Fremont Place were improved, there would be asphalt going all the way to the property line with curbs, gutters, sidewalks, etc. Parking could be allowed on one side of the street, but the City would have to make this decision.

Mr. Michaelis said the map illustrates the canopies of the existing trees, which go way beyond the trunks. The trunks could be located on the property line, with the canopies hanging over 15 to 20 feet. But to say that all of the trees are 25 feet from the property line is probably an incorrect assumption. They would have to look at the trunks to determine exactly where the trees are located. He said his assumption is that the trees are within 15 feet of the property line.

Mr. Michaelis pointed out that traffic is a SEPA concurrency issue, and staff did not raise any issues about traffic during their review.

Mr. Michaelis referred to the comparison Mr. Nelson made between the subject property and the Safeway development. He reminded the Commission that the Safeway development is a separate project, and should not become the basis for the Commission recommending denial of the current application. The proposed application should stand on its own merits. If the code is applied correctly, there will not be any code enforcement issues after the fact.

Regarding the rooftop view from properties higher up, Mr. Michaelis advised that a 35-foot tall house would create the same type of view. The number of units allowed on the subject property would not alter the possible view significantly one way or another.

Mr. Michaelis explained that when talking about single-family zones, people often think of such things as the values of family life, values of neighborhoods, being part of something, etc. He pointed out that if a single-family home were constructed on the property, it would likely end up being a rental unit. He summarized that it would be difficult to convince someone to purchase a single-family home on the subject property since it would be separated from the single-family neighborhoods. He said he believes the subject property is an appropriate location for multi-family developments, and four units would provide an appropriate transition between the developments that are located to the east and the west of the subject property. He noted that the subject property faces the back of the adjacent condominium complex, and the proposed change would provide an area where four families could be together instead of one all alone.

Commissioner Phisuthikul asked if a survey had been done for the property to identify its contour and the location of the trees on the site. Mr. Michaelis answered that a survey has not been performed but would be done as part of the development process, which would only be started if the City grants approval of the Comprehensive Plan amendment and concurrent rezone as proposed.

Commissioner Broili requested clarification about the amount of parking that would be provided on the subject property. Mr. Michaelis answered that the Shoreline Development Code would require two parking spaces for each multi-family unit that has three bedrooms or more. So four units would require eight parking spaces. Commissioner Broili asked if the applicant feels that four units plus the required parking would all fit on the subject property. Mr. Michaelis referred to a type of development that provided two stories of construction, with parking located underneath, and said this is one option that could be considered for the subject property.

Commissioner Hall asked staff to review the City's standard procedure for ensuring that significant trees are protected. Mr. Stewart explained that when a development permit is submitted, the City would require a tree inventory showing the location of all of the existing significant trees on the site. The staff would then apply the Development Code standards for tree retention. Mr. Pyle added that the Development Code requires the retention of at least 20 percent of the trees. However, there are incentives within the Code that allow applicants to alter the placement of the structure on the lot in order to retain more of the significant trees. The City typically promotes the retention of clusters of trees, and sometimes the setbacks can be adjusted around the clusters. Mr. Stewart pointed out that the current

code grants any property owner the right to remove six significant trees within a 36-month period without a permit.

Vice Chair Piro asked if there would be an opportunity to require fewer parking spaces of the development by noting the proximity of the property to the transit services that are available on Aurora Avenue. Mr. Stewart answered that an applicant could request a reduction of the on-sight parking requirements if they meet certain criteria, one of which is access to public transit.

Vice Chair Piro requested further information about how the height restrictions on the property would change if the proposed rezone were approved. Mr. Pyle referred to a table that was provided in the staff report to address this issue. He explained that there would be a five-foot difference between the R-6 and R-24 zones.

Vice Chair Piro requested feedback from staff regarding the public comments that were made about the existence of a piped stream. Mr. Stewart said under the current Development Code, streams are defined as surface watercourses with a defined channel or bed and piped watercourses are not regulated. Mr. Pyle added that there is no drainage easement currently located on the property, which indicates that there would be no required access necessary on the property. The cap that was referenced is located within the triangle area, but no survey has been conducted to indicate exactly where the pipe is located. Mr. Stewart said that when a development permit is submitted to the City, staff would request that easements or pipes be identified on the plot plan. He said it is likely that the drainage easement, if there is one, would be located in the right-of-way. But on many occasions, the City has encountered stormwater systems that have been constructed on private property. While they may fulfill a public function, they exist without any public easement or ownership. Shoreline does not have a clearly defined public drainage system.

If the City were to determine that such a drainage system was on the property itself, Vice Chair Piro inquired if there would be any implications in terms of development intensity opportunities. Mr. Stewart answered that the City would not allow a structure to be located on or over the utility, but this is a site development detail that would be addressed as part of the City's review of a development application.

Mr. Stewart referred to the question that was previously raised about the surface water design manual. He explained that the City has adopted the 1998 King County Surface Water Design Manual and the Urban Land Use Best Management Practices Volume IV of the 1992 Stormwater Management Manual for the Puget Sound Basin for best management practices. He reminded the Commission that the Stormwater Master Plan is currently under review by the City Council and has not yet been adopted.

Commissioner MacCully asked if a proposed development on the site would have the potential of changing the current sidewalk configuration on the property boundary along North 160th Street. Mr. Michaelis answered that access to the subject property would be off of Fremont Place, so no curb cuts are proposed along North 160th Street. The existing pedestrian access along 160th Street would not be disturbed. Mr. Pyle explained that preliminary discussions with the City's development review engineer indicate that the applicant would be required to do complete frontage improvements to bring the

property up to code, and this would require ADA accessibility on the corner of Fremont Place and 160th Street. It would also require the reconstruction of the sidewalk along North 160th if it does not already meet ADA standards.

At Commissioner Broili's request, Mr. Stewart pointed out the location of Darnell Park. He explained that the significance of this park in Ms. Way's letter is that it contains a portion of Boeing Creek. He briefly described the location of Boeing Creek throughout the City. Commissioner Broili inquired if it would be reasonable to expect that stormwater from the subject property would be discharged into the piped stormwater line that runs down Fremont Place (Boeing Creek). Mr. Pyle answered that this could potentially occur, but it all depends on the system that is proposed and approved.

Commissioner Broili asked about the easement width requirements for utility services. Mr. Stewart said the width requirements vary depending on the type of service, the size, when the easement was granted, etc. Mr. Pyle noted that there would be no easement requirement for any of the underground electrical, water or gas utility lines. He explained that the subject property is different than the Safeway property, which was referenced by a citizen earlier in the hearing. There is a Seattle City Light right-of-way located to the rear of the Safeway site, and they can strictly regulate what can and cannot be placed within their right-of-way. The subject property is privately owned, and the City owns the right-of-way.

Mr. Stewart informed the Commission that Ms. Way would like to enter Figure 2.3 of the Boeing Creek Basin Characterization Report into the record. The document provides an illustration of what he described earlier about the location of Boeing Creek. He advised that he would provide a copy of the figure to each of the Commissioners. However, he said staff would dispute the location of the x Ms. Way placed on the map to identify the subject property's location. He said the site location is actually further to the south.

Commissioner Kuboi pointed out that the existing R-6 zone would allow a maximum of 50% impervious surface, and an R-24 zone would allow up to 85%. However, the R-24 zone would require a Type II Stormwater Detention facility. He inquired if any type of detention would be required for an R-6 zone. Mr. Pyle answered that the detention requirements for R-6 developments are determined on a case-by-case basis depending on the soil conditions and other alternatives.

Commissioner Kuboi asked Mr. Michaelis if he could discuss the possible parameters of what the footprint would be and whether or not a significant number of trees would have to be removed. Mr. Michaelis said that without an actual survey identifying the location of the trunks of the trees, he would not be willing to provide further statements regarding this issue. Commissioner Kuboi asked if Mr. Michaelis was in a position to know whether or not the applicant would entertain a rezone that was conditioned on keeping a certain number of the trees within the 15-foot buffer. Mr. Michaelis said he would not advise in favor of any conditions without specific knowledge of what the language says beforehand.

Commissioner McClelland reviewed the property's setback requirements with the staff. She clarified that a buffer would not be required in addition to the setback, and the setback may or may not include the cluster of the trees. Mr. Pyle clarified that some of the trees are located on the subject property and

some are not. Under the R-24 zoning designation, assuming that it is not abutting or adjacent to a lower zoning of R-6, a property would only be required to have five feet of rear yard setback. But in this situation, the proposed R-24 zone abuts an R-6 zone. Therefore, the rear property setback requirement would be 15 feet. He further pointed out that the percentage of impervious surface would be calculated based on the entire tax parcel, including the property located within the setback areas.

Commissioner Broili inquired if the 15-foot setback would be measured horizontally or if it would follow the contour of the land. He noted that the stand of trees is located on a slope, so the distance could be different depending on which way it is measured. Mr. Stewart explained that in this case, the trees are all located near the setback, but the tree provision only requires the percentage to be retained on site, and not necessarily within the setback. Trees and setbacks are two separate provisions of the code that, in this case, just happen to overlap. He said he suspects that when the applicant submits a development application, they will do their tree retention plan in the places where the trees are currently located, and hopefully retain more than the minimum. He further explained that the setback would not be measured following the contour of the land.

Commissioner Kuboi explained that the Planning Commission's responsibility is to look at the good of the community as a whole, and this includes looking at the community from the perspective of future residents. There were a number of comments about renters versus owners, and he wished the community would not segregate the two as good or bad. The community is as good as it is because they have a bit of everything. Everyone has a right to live in the community, and the City needs to provide a selection of housing to meet the needs of a wide variety of people. He reminded the residents of the condominiums projects that surround the subject property that, conceivably, the people who lived in the neighborhood before their units were developed could have had the same concerns. He said it would behoove everyone to think about what it takes to make a community, both the residents of Shoreline now and the new people who will move into the City in the future.

Les Nelson pointed out that the setback area would only be 15 feet, and the canopy and roots of the trees are up to 30 feet in width. He said one way or another, all of the trees would be removed to make room for the utility lines that are necessary to serve the future development.

Janet Way asked for another opportunity to provide additional information for the record. Chair Harris expressed that Ms. Way had already had an opportunity to speak before the Commission, and it was time for the Commission to close the public hearing. Ms. Way expressed her objection to Chair Harris' interpretation of the public hearing procedures.

AT THE CONSENSUS OF THE COMMISSION, CHAIR HARRIS CLOSED THE PUBLIC HEARING.

Mr. Stewart announced that because of the appeal that was submitted for the Echo Lake proposal, the Commission would postpone their deliberations on this item until a future date. He encouraged the citizens to follow the Planning Commission's agenda on the City's Website for further information about when this item would be further debated.

File #301275: 18511 Linden Avenue North Site-Specific Comprehensive Plan Amendment

Chair Harris briefly reviewed the rules and procedures for the public hearing. He invited Commissioners to disclose any ex-parte communications they might have had on the agenda item. He also invited members of the audience to voice their concerns regarding the participation of any Commissioner. None of the Commissioners nor anyone in the audience voiced an appearance of fairness issue.

Mr. Pyle explained that the proposal is a site-specific Comprehensive Plan amendment request and does not include a rezone. The request is to change the land use designation of the subject property from high-density residential to mixed use. The zoning on the parcel would remain as R-48, since an R-48 zoning designation would still be allowable in a mixed-use land use designation. No development proposal has been submitted to date.

Mr. Pyle used maps to illustrate the subject property and the surrounding uses, which includes mixed-use, commercial business and medium-density land use designations. He referenced the zoning map and pointed out that surrounding zoning includes R-18, R-12 and RB. He noted that the subject property is located just behind the James Alan Salon, and it takes access off of Linden Avenue North. The Windermere Real Estate Building is located directly to the east, and a Verizon phone relay station is directly to the north. He briefly reviewed the aerial photograph that was prepared for the site.

Mr. Pyle pointed out that the proposed mixed-use land use designation would allow the opportunity for a future rezone to a commercial designation, which would be prohibited by the existing high-density residential designation. A commercial zoning designation would allow for expansion of the James Alan Salon when their business needs to grow, but a rezone would have to be approved by the City.

Mr. Pyle said staff believes the three criteria for approval of the Comprehensive Plan amendment have been met by the proposal. Therefore, they recommend that the Planning Commission gather public testimony, consider the record, and then forward a recommendation to the City Council to approve the site specific land use amendment as proposed.

Mr. Pyle recalled that when the City undertook the 2001 Reconciliation Project, they reviewed all of the zoning and land used designations for the entire City for consistency. When the City of Shoreline incorporated, the subject parcel was slated as mixed use. However, it was zoned as R-48.

Keith McGlashan, Applicant, explained that at the time the application was submitted, they didn't ask to apply for a concurrent rezone because they did not own all the properties. However, they secured the salon in December and closed on the little house last Monday. Now they own the entire parcel, and they are excited about expanding their facility to create more jobs and provide more retail space in the City.

Commissioner MacCully asked how the City would handle a situation where a person owns two pieces of property with identical zoning and wants to develop something that goes over the property line. Mr. Stewart explained that if an owner wanted to develop across the property line, a simple lot consolidation process would be required to remove the property line and a SEPA review would not be necessary.

Vice Chair Piro pointed out that going to a mixed-use land use designation for the parcel would not necessarily require that future construction provide multiple uses. Future development opportunities would include residential, office, retail, etc. Mr. Stewart clarified that the mixed-use designation in both the current and proposed Comprehensive Plan would allow a number of different zones. From the City's point of view, the ideal would be to encourage real mixed-use development that provides for a multiplicity of uses. But this would depend upon the market and the desires of the property owners. The R-48 zoning that exists on the property would not allow for commercial development. If it were changed to a retail commercial zoning designation, both residential and commercial uses would be allowed.

Commissioner McClelland inquired if sidewalks would be required along the street front if the site were redeveloped in the future. Mr. Stewart answered that, typically, all redevelopment projects that meet certain thresholds require frontage improvements.

Mr. Stewart provided further clarification that even if the proposed land use designation of mixed use were approved, the applicant would not be able to develop the property as a commercial use unless a rezone were approved. Commissioner McClelland questioned why the applicant did not apply for a concurrent rezone application if their intention was to expand the retail uses on the site. Mr. McGlashan said they chose not to apply for a rezone because it was less costly for them to purchase the two additional parcels as residential rather than commercial zoning.

Vice Chair Piro clarified that a rezone could happen at any point during the year, and is not limited to a once-a-year review of the Development Code. Mr. Stewart agreed and further explained that the once-a-year limitation only applies to the Comprehensive Plan and not the Development Code.

Janet Way, 940 Northeast 147th Street, reiterated her concern that the rezone and Comprehensive Plan amendment hearings for three proposals are being conducted simultaneously as legislative and quasi-judicial processes while the Echo Lake proposal has been postponed. This means it could be quite some time before the issues are deliberated upon, since the Echo Lake appeal must be resolved first. She suggested the process might be confusing to the public, and it will be unclear how all of the projects interrelate and impact each other.

CHAIR HARRIS MOVED THAT THE PUBLIC HEARING BE CLOSED. COMMISSIONER MACCULLY SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

File #201277: 19671 – 15th Avenue Northeast Site-Specific Comprehensive Plan Amendment and Rezone

Again, Chair Harris briefly reviewed the rules and procedures for the public hearing. He invited Commissioners to disclose any ex-parte communications they might have had on the agenda item. He also invited members of the audience to voice their concerns regarding the participation of any Commissioner. None of the Commissioners or anyone in the audience voiced an appearance of fairness issue.

Mr. Pyle reviewed the staff report explaining that the application is for a site-specific Comprehensive Plan amendment and rezone. The proposed action is to change the Comprehensive Plan land use designation from Ballinger Special Study Area to high-density residential. The subject property was placed in Ballinger Special Study Area status during the 1998 Comprehensive Plan adoption. The applicant has also submitted an application for a concurrent rezone to change the site from R-6 to R-24, and the surrounding property is already zoned R-24 on all sides of the subject property. He provided a map to illustrate the subject property and the surrounding R-24 zones. He also provided photographs of the surrounding properties.

Mr. Pyle explained that upon annexation of the Ballinger Neighborhood from King County in 1995, the City designated the parcel as high-density residential and adopted it as such in the 1998 Comprehensive Plan. In 2001 the Ballinger Neighborhood was changed to the designation of Ballinger Special Study Area as part of the zoning and land use reconciliation project. The zoning of the parcel as R-6 was frozen at that time. Approval of the proposal would allow the parcel to be designated as high-density residential and allow it to rezone to be consistent with the surrounding zones. The use of the house on the subject property as a single-family residence is not very practical as it is surrounded by R-24 uses. The owner claims it has been difficult to rent the home, and this impacts his ability to make improvements. Because of the intensity of the surrounding developments, it is apparent that the infrastructure exists to support redevelopment of the site. He pointed out that as part of the SEPA process, notices were mailed to all of the utility providers, and the applicant was required to acquire water and sewer availability certificates.

Mr. Pyle said that since this site is surrounded by high-density uses, rezoning the parcel would not lead to a further growth outward of the high-density zone. He explained that one of the intents of the Ballinger Special Study Area was that the area of higher density not expand outward and become larger.

Mr. Pyle reported that staff has concluded that the application is consistent with the 1998 Comprehensive Plan, the 2004 Planning Commission recommended Comprehensive Plan Draft, the King County Countywide Planning Policies, and the City of Shoreline Development Code. The proposed zoning is consistent with the surrounding areas and would allow for the construction of up to five units, thus helping the City meet its growth targets. He said the project has also satisfied the requirements of the State Environmental Policy Act as outlined in the Staff Report. Therefore, staff recommends that the Commission approve the proposed applications for a site-specific Comprehensive Plan amendment and a rezone to R-24.

David Maul, Rutledge Maul Architects, 19236 – 47th Avenue, Lake Forest Park, said staff did a great job of putting together the facts associated with the applications. He stated that the proposed changes would be good for the neighborhood, and all of the utilities and the infrastructure to support future development of the site are already in place. He asked that the Commission forward a recommendation of approval to the City Council.

Commissioner McClelland asked if the structure located behind the house is currently being used as a dwelling unit. Mr. Maul said it is a detached garage with an apartment above it. There are two dwelling units on the site right now.

Vice Chair Piro clarified that there are no plans in the City's current work program to begin the Ballinger Study Area. He asked where the closest commercial node to the subject property is located. Mr. Pyle said two commercial areas are located near the subject property. To the north is 205th, which is an enormous retail facility. To the south is the North City business district. These are both located within ½ to 1 mile of the subject property.

Vice Chair Piro asked what options there might be for development if the property were identified as a mixed-use land use. Mr. Stewart said that if the Comprehensive Plan land use designation were mixed use, the R-24 zoning designation that is being proposed would be allowed. Vice Chair Piro voiced his concern that this is an intense area that is used for a single type of use. This creates a pattern where access to anything else would require automobile trips. He said he is looking for opportunities within this district to create a more mixed-use environment. Mr. Stewart said all of the special study areas have this same characteristics, and the hope is that they will be able to bring in the community to discuss where they might be able to intensify the land uses without injuring the existing character of the community. But in this case, the proposed action would resolve an issue of spot zoning that was inherited from King County. Mr. Pyle said that during the reconciliation process, this parcel would have been adopted as a higher density. But because it was frozen into the Ballinger Special Study Area, it was locked into its current status.

Commissioner McClelland questioned how the applicant would be able to get five units on the subject property and still provide space to meet all of the required parking and preserve the view of the surrounding properties. Mr. Maul submitted a preliminary map of one possible development concept for the subject property, which shows five units being built on the site with parking on the lowest level. It was entered into the record as Exhibit 4. Mr. Maul pointed out that the elevation of the 3-story condominiums that are located to the west is about ten feet higher than the subject property. Any development on the subject property would only come up to the second story of the existing building to the west.

Janet Way, 940 Northeast 147th Street, said she is speaking on behalf of the Sno-King Environmental Council and Echo Park. She expressed her concern about the cumulative impact all of the rezones would have to the environment. She asked that the Commission particularly consider the cumulative impact on McAleer Creek, which is the same watershed that would be impacted by any development that takes place at Echo Lake. While this is just a small development, it is only about ½ block from McAleer Creek, and there was a recent development put in on the other side of McAleer Creek where the property was cleared all the way to the buffer of the critical area. They should consider the negative adverse impact of continuously permitting more and more larger development along the watershed. Again, she said it is unfortunate that as the rezones are being considered, the applicants are not required to provide details about the proposed site design and the stormwater detention that would be required. She also expressed her concern about the Commission holding a public hearing now and then waiting to

conduct their deliberations until the appeal on the Echo Lake proposal has been resolved. This also makes it difficult for the Commission to consider the cumulative impacts of development in the City.

COMMISSIONER BROILI MOVED THAT THE PUBLIC HEARING BE CLOSED. COMMISSOINER SANDS SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

7. REPORTS OF COMMITTEES AND COMMISSIONERS

None of the Commissioners provided additional comments during this portion of the meeting.

8. UNFINISHED BUSINESS

Commissioner Hall reminded the Commissioners of the upcoming retreat that is scheduled for March 10th. He said there would likely be more things to talk about than time would permit. Commissioner Kuboi agreed and suggested that prior to the retreat, the Commissioners should identify the exact topics that want to discuss. Commissioner Hall indicated that staff would circulate a draft agenda to the Commissioners for comment prior to the next meeting. The intent is to use the Commissioner's comments to come up with a final list of agenda items that could be discussed within the four-hour allotted time period.

Commissioner MacCully said he previously suggested that not only should the Commission have a honed agenda for the retreat, they should also collectively agree to allow the facilitator to hold them to the agenda.

Mr. Stewart pointed out that the retreat would be advertised as an open public meeting, and seating would be available for the public to attend. However, no public comment would be allowed.

The Commission discussed the best way to handle unruly speakers and maintain control of the Commission meetings. Mr. Stewart shared the City Council's method for handling unruly situations. If a City Council Member feels that a situation has gone too far, the member can choose to move for a recess. If there is a second and a majority vote, the Council recesses for a period of time. The Planning Commission could use a similar method.

Chair Harris said he wants the citizens to feel like their comments are worthwhile, and that the Commission is interested in working with them. The Commissioners concluded that Chair Harris has been doing a good job of keeping the meetings under control, while still allowing the citizens to express themselves.

9. NEW BUSINESS

Commissioner Hall suggested that the following three items be considered for inclusion on future Commission agendas: a discussion of the advantages and disadvantages of issuing a notice for public hearing prior to the expiration of the SEPA appeal deadline, a discussion about "sidewalks that lead to

nowhere" and alternatives to providing connectivity of sidewalks in the City's pedestrian network through impact fees, etc., and a discussion on the possibility of the Planning Commission initiating a docket request to replace the Ballinger Special Study Area and other special study areas with land use designations that are more meaningful. He emphasized that all three of these topics would have a lower priority than any quasi-judicial proceedings, the critical areas regulations and the cottage housing provisions.

Commissioner Kuboi agreed that each of the three topics suggested by Commissioner Hall could be added to the backlog of issues the Commission wants to discuss. But the priority of issues such as this should be discussed further at the Commission Retreat. If the Commission is going to consider the backlog of possible topics of discussion, he would like to look at a holistic list rather than just the issues that have been raised recently.

Regarding Commissioner Hall's concern about noticing a public hearing prior to the expiration of the SEPA appeal deadline, Mr. Stewart explained that the City Attorney advised that the Echo Lake proposal would be a legislative matter, and that the SEPA Determination would not have an administrative appeal to the Hearing Examiner. However, after the hearings had been scheduled, the attorney changed his opinion and required the City to issue the corrected notice and corrected SEPA Determination, which included an administrative appeal. Normally, the City would not have scheduled the public hearing until after the SEPA appeal period had expired.

10. ANNOUNCEMENTS

No announcements were made.

11. AGENDA FOR NEXT MEETING

Mr. Stewart announced that a public hearing on the draft critical areas ordinance is scheduled for March 17th. Staff would propose about six additional changes.

12. ADJOURNMENT

The meeting was adjourned at 10:05 p.m.

David Harris	Jessica Simulcik
Chair, Planning Commission	Clerk, Planning Commission

PLANNING COMMISSION AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Public Hearing to Discuss Critical Areas Ordinance Update
DEPARTMENT:	Planning and Development Services
PRESENTED BY:	Timothy M. Stewart, Director, Planning and Development Services Matthew Torpey, Planner II

EXECUTIVE SUMMARY

Attached is a matrix of specific changes to the draft critical area ordinance that staff has received to date. This document will grow as both the public and Planning Commission provide proposed code changes to staff.

The Planning Commission held two workshops to discuss the draft critical areas ordinance on January 20, 2005 and February 17, 2005. Staff solicited comments from the Planning Commission and responded at the second workshop with a spreadsheet of comments from a Commissioner with a response or answer from staff. The purpose of this meeting is to conduct an open record public hearing on the draft critical areas ordinance and receive input from the Citizens of Shoreline.

The City's CAO was adopted in 2000 using Best Available Science (BAS). That science has been supplemented by the City of Shoreline Stream and Wetland Inventory (May 2004) and the Draft Lake Washington/Cedar/Sammamish Watershed (WRIA 8) Chinook Salmon Conservation Plan (November 12, 2004), the Adolfson Technical Memo dated December 7, 2004 and numerous other publications and documents. Many of those documents are summarized in a technical memorandum produced by Adolfson and Associates (October 2003).

The draft update contains a number of important changes, including:

- Significant increases in stream and wetland buffer requirements, ranging from 15% to 250%.
- Elimination of the disparity in levels of protection between wetlands and streams.
- Significant increases in Wetland replacement and enhancement ratios.
- Clarification of the terms "hazardous tree" and "salmonid fish use".
- Clarification that Fish and Wildlife Habitat areas are places formally designated by the City of Shoreline, based up a review of BAS and input from the Washington Department of Fish and Wildlife, Washington Department of Ecology and other agencies.
- A new provision encouraging the restoration of piped and denigrated watercourses.

- A new provision allowing for view preservation and enhancement in critical areas and buffers, if a Critical Area Stewardship Plan, which will protect and enhance critical area functions and values, is developed, approved and implemented.
- Amends the definition of “reasonable use”.

All inquiries, questions, and comments in regards to the draft documents may be directed to Matt Torpey, Planner II. City of Shoreline, 17544 Midvale Ave. N., Shoreline, WA 98133. (206) 546-3826, or email mtorpey@ci.shoreline.wa.us

STAFF RECOMMENDATION

Staff recommends that Planning Commission conduct the public hearing on the Critical Area Ordinance Update and receive comments on the draft proposed code changes from the public. Staff also recommends that Planning Commission deliberation on the amendments be scheduled at a future meeting following the close of the public hearing.

ATTACHMENTS

Attachment I: Proposed Code Change Matrix

Proposed Changes to the Draft Critical Areas Ordinance

Item #	*Current Draft Code Section*	*Proposed Change to Draft Code*	*Proposed Draft Code Section*
1	**20.20.046 S definitions.** **Streams** Those areas in the City of Shoreline where open surface waters produce a defined channel or bed, not including irrigation ditches, canals, storm or surface water runoff devices or other entirely artificial open watercourses, unless they are used by salmonids or are used to convey streams naturally occurring prior to construction ~~in such watercourses~~. A channel or bed need not contain water year-round, provided that there is evidence of at least intermittent flow during years of normal rain fall.	Remove the phrase "in the City of Shoreline."	**20.20.046 S definitions.** **Streams** Those areas ~~in the City of Shoreline~~ where open surface waters produce a defined channel or bed, not including irrigation ditches, canals, storm or surface water runoff devices or other entirely artificial open watercourses, unless they are used by salmonids or are used to convey streams naturally occurring prior to construction ~~in such watercourses~~. A channel or bed need not contain water year-round, provided that there is evidence of at least intermittent flow during years of normal rain fall.
2	**20.80.030 Exemptions.** … L. Educational activities, scientific research, and outdoor recreational activities, including but not limited to interpretive field trips, bird watching, and use of existing trails for horseback riding, bicycling and hiking, that will not have an adverse effect on the critical area;	Remove "Horseback Riding" Insert "public beach access and other water recreation related activities"	**20.80.030 Exemptions.** … L. Educational activities, scientific research, and outdoor recreational activities, including but not limited to interpretive field trips, bird watching, public beach access including water recreation related activities, ~~and use of existing trails for horseback riding~~, bicycling and hiking, that will not have an adverse effect on the critical area;
3	**20.80.080 Alteration or development of critical areas – Standards and criteria.** ~~All impacts to critical areas functions and values shall be mitigated.~~This section applies to mitigation required with all critical areas reviews, approvals and enforcement pursuant to this Chapter. This section is supplemented with specific measures under subchapters for particular critical areas. The proponent for a project involving critical areas shall	Remove the phrase "seek to" from this code section	**20.80.080 Alteration or development of critical areas – Standards and criteria.** ~~All impacts to critical areas functions and values shall be mitigated.~~This section applies to mitigation required with all critical areas reviews, approvals and enforcement pursuant to this Chapter. This section is supplemented with specific measures under

Item #	Current Draft Code Section	Proposed Change to Draft Code	Proposed Draft Code Section
	seek to avoid, minimize and mitigate the impacts to the critical areas through ~~Mitigation~~ actions ~~by an applicant or property ownershall~~that occur in the following sequence:		subchapters for particular critical areas. The proponent for a project involving critical areas shall ~~seek to~~ avoid, minimize and mitigate the impacts to the critical areas through ~~Mitigation~~ actions ~~by an applicant or property ownershall~~that occur in the following sequence:
4	**20.80.230 Required buffer areas.** … D. Landslide hazard area buffers may be reduced to a minimum of 15 feet when technical studies conclusively demonstrate that the reduction will adequately protect people and the proposed and surrounding development from the landslide hazard.	Remove "conclusively" and reword the section to reduce risk of a hazard to people and property.	**20.80.230 Required buffer areas.** … D. Landslide hazard area buffers may be reduced to a minimum of 15 feet when technical studies ~~conclusively~~ demonstrate that the reduction will not increase the risk of the hazard to people or property on or off site.

Item #	Current Draft Code Section	Proposed Change to Draft Code	Proposed Draft Code Section
5	**20.80.270 Classification.** Fish and wildlife habitat areas are those areas designated by the City based ~~that meet~~ on any of the following criteria, review of the best available science, and input from Washington Department of Fish and Wildlife, Washington Department of Ecology and other agencies: A. The ~~documented~~ presence of species proposed or listed by the Federal government or State of Washington as endangered, threatened, critical, or priority documented by best available science; or B. The presence of heron rookeries or priority raptor nesting trees; or C. Type I wetlands, as defined in these regulations; or D. Type I streams, as defined in these regulations; or E. Those areas which include the presence of locally significant species, if the City has designated such species. (Ord. 238 Ch. VIII § 4(B), 2000).	All regulated streams and wetlands, and their buffers should be considered fish and wildlife habitat areas. The Puget Sound should be considered a fish and wildlife habitat area.	**20.80.270 Classification.** A. Fish and wildlife habitat conservation areas are those areas designated by the City based ~~that meet~~ on any of the following criteria, review of the best available science, and input from Washington Department of Fish and Wildlife, Washington Department of Ecology and other agencies: 1.~~A~~. The ~~documented~~ presence of species proposed or listed by the Federal government or State of Washington as endangered, threatened, critical, or priority ~~documented by best available science~~; or 2~~B~~. The presence of heron rookeries or priority raptor nesting trees; or ~~C. Type I wetlands, as defined in these regulations; or~~ ~~D. Type I streams, as defined in these regulations; or~~ B. The City designates the following fish and wildlife habitat conservation areas that meet the above criteria, and this sdesignation does not preclude designation of additional areas as provided in SMC 20.80.270(A):

Item #	*Current Draft Code Section*	*Proposed Change to Draft Code*	*Proposed Draft Code Section*
			1. All regulated streams and wetlands and their associated buffers as determined by a qualified specialist. 2. The waters, bed and shoreline of Puget Sound up to the ordinary high water mark. C~~E~~. Those areas which include the presence of locally significant species, if the City has designated such species. (Ord. 238 Ch. VIII § 4(B), 2000).
6	**20.80.470 Classification.** *[Numbering is corrected in this section.]* Streams shall be designated ~~Type I, Type II, Type III, and Type IV~~ according to the criteria in this section. When more than one stream type is present in short alternating segments on a subject property, it will be classified according to the stream type which is more restrictive. A. "Type I streams" are those streams identified as "Shorelines of the State" under the City Shoreline Master Program. B. "Type II streams" are those ~~natural~~ streams that are ~~not Type I streams and are~~ either perennial or intermittent and have salmonid fish use~~have one of the following characteristics:~~ ~~1. Salmonid fish use;~~ ~~2. Potential for salmonid fish use; or~~ ~~3. Significant recreational value~~. C. "Type III streams" are those ~~natural~~ streams with perennial (year-round) or intermittent flow and are not used by salmonid fish~~ and have no potential to~~	See next page for proposed change.	**20.80.470 Classification.** *[Numbering is corrected in this section.]* Streams shall be designated ~~Type I, Type II, Type III, and Type IV~~ according to the criteria in this section. When more than one stream type is present in short alternating segments on a subject property, it will be classified according to the stream type which is more restrictive. A. "Type I streams" are those streams identified as "Shorelines of the State" under the City Shoreline Master Program. B. "Type II streams" are those ~~natural~~ streams that are ~~not Type I streams and are~~ either perennial or intermittent and have salmonid fish use~~have one of the following characteristics:~~ ~~1. Salmonid fish use;~~

Item #	Current Draft Code Section	Proposed Change to Draft Code	Proposed Draft Code Section
	~~be used by salmonid fish~~. D. "Type IV streams" are those streams ~~and natural drainage swales~~ with perennial or intermittent flow with channel width less than two feet taken at the ordinary high water mark that are not used by salmonid fish. E. For the purposes of this section, "salmonid fish use" and "used by salmonid fish" is presumed for: 1. Streams where naturally reoccurring use by salmonid populations has been documented by a government agency; 2. Streams that are fish passable by salmonid populations from Lake Washington or Puget Sound, as determined by a qualified professional based on review of stream flow, gradient and barriers and criteria for fish passability established by the Washington Department of Fish and Wildlife; and 3. Streams that are planned for restoration in a 6-year capital improvement plan adopted by a government agency that will result in a fish passable connection to Lake Washington or Puget Sound. The Department may waive the presumption of salmonid fish use for stream segments where a qualified professional has determined there are confirmed, long term water quality parameters making the stream segment incapable of supporting fish. ~~E. "Intentionally created streams" are those manmade streams defined as such in these regulations, and do not include streams created as mitigation. Purposeful creation must be demonstrated to the City through documentation, photographs, statements and/or other evidence. Intentionally created streams may include irrigation and drainage ditches, grass-lined swales and canals. Intentionally created streams are excluded from regulation under this subchapter, except manmade streams that provide critical habitat for species of fish and wildlife that are proposed or listed by the Federal government or State of Washington as endangered, threatened, critical, or priority species. Intentionally created streams that provide documented critical habitat for these species shall be classified and treated as natural streams.~~ (Ord. 238 Ch. VIII § 8(B), 2000).	Include language to allow proposals for private dam removal to be considered when assessing fish passability.	~~2. Potential for salmonid fish use; or~~ ~~3. Significant recreational value~~. C. "Type III streams" are those ~~natural~~ streams with perennial (year-round) or intermittent flow and are not used by salmonid fish ~~and have no potential to be used by salmonid fish~~. D. "Type IV streams" are those streams ~~and natural drainage swales~~ with perennial or intermittent flow with channel width less than two feet taken at the ordinary high water mark that are not used by salmonid fish. E. For the purposes of this section, "salmonid fish use" and "used by salmonid fish" is presumed for: 1. Streams where naturally reoccurring use by salmonid populations has been documented by a government agency; 2. Streams that are fish passable by salmonid populations from Lake Washington or Puget Sound, as determined by a qualified professional based on review of stream flow, gradient and barriers and criteria for fish passability established by the Washington Department of Fish and Wildlife; and 3. Streams that are: a. planned for restoration in a 6-year capital improvement plan adopted by a government agency that will result in a fish passable connection to Lake Washington or Puget Sound. b. Planned removal of private dams that will result in a fish passable connection to Lake Washington or the Puget Sound. The Department may waive the presumption of salmonid fish use for stream segments where a qualified professional has determined there are confirmed, long term water quality parameters making

Item #	Current Draft Code Section	Proposed Change to Draft Code	Proposed Draft Code Section
			the stream segment incapable of supporting fish. ~~E. "Intentionally created streams" are those manmade streams defined as such in these regulations, and do not include streams created as mitigation. Purposeful creation must be demonstrated to the City through documentation, photographs, statements and/or other evidence. Intentionally created streams may include irrigation and drainage ditches, grass-lined swales and canals. Intentionally created streams are excluded from regulation under this subchapter, except manmade streams that provide critical habitat for species of fish and wildlife that are proposed or listed by the Federal government or State of Washington as endangered, threatened, critical, or priority species. Intentionally created streams that provide documented critical habitat for these species shall be classified and treated as natural streams.~~ (Ord. 238 Ch. VIII § 8(B), 2000).
7	**20.80.480 Required buffer areas.** … H. Restoring piped watercourses. 1. The city encourages the opening of previously channelized/culverted streams and the rehabilitation and restoration of streams. 2. When piped watercourse sections are restored, a protective buffer shall be required of the stream section. The buffer distance shall be based on an approved restoration plan, regardless of stream classification, and shall be a minimum of 10 feet to allow for restoration and maintenance. The stream and buffer area shall include habitat improvements and measures to prevent erosion, landslide and water quality impacts. Opened channels shall be designed to support fish access, unless determine to be unfeasible by the	Change the requirement, "the applicant shall seek written agreement" to "the applicant shall obtain a written agreement."	**20.80.480 Required buffer areas.** … H. Restoring piped watercourses. 1. The city encourages the opening of previously channelized/culverted streams and the rehabilitation and restoration of streams. 2. When piped watercourse sections are restored, a protective buffer shall be required of the stream section. The buffer distance shall be based on an approved restoration plan, regardless of stream classification, and shall be a minimum of 10 feet to allow for restoration and maintenance. The stream and buffer area shall include habitat improvements

Item #	Current Draft Code Section	Proposed Change to Draft Code	Proposed Draft Code Section
	City. 4. Removal of pipes conveying streams shall only occur when the City determines that the proposal will result in a net improvement of water quality and ecological functions and will not significantly increase the threat of erosion, flooding, slope stability or other hazards. 5. Where the buffer of the restored stream would extend beyond a required setback on an adjacent property, the applicant shall seek written agreement from the affected neighboring property owner. (Ord. 299 § 1, 2002; Ord. 238 Ch. VIII § 8(C), 2000).		and measures to prevent erosion, landslide and water quality impacts. Opened channels shall be designed to support fish access, unless determine to be unfeasible by the City. 4. Removal of pipes conveying streams shall only occur when the City determines that the proposal will result in a net improvement of water quality and ecological functions and will not significantly increase the threat of erosion, flooding, slope stability or other hazards. 5. Where the buffer of the restored stream would extend beyond a required setback on an adjacent property, the applicant shall ~~seek~~ obtain a written agreement from the affected neighboring property owner. (Ord. 299 § 1, 2002; Ord. 238 Ch. VIII § 8(C), 2000).