**Council Meeting Date: May 5, 2003** **Agenda Item: 5(a)**

# CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

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| **AGENDA TITLE:** | Proposed Revisions to Critical Areas, Procedures and Administration |
| **DEPARTMENT:** | Planning and Development Services |
| **PRESENTED BY:** | Anna Kolousek, Assistant Director |

## PROBLEM/ISSUE STATEMENT:

Goal #8 in the 2002-2003 Council Work Plan is to "Develop a water quality and environmental program to comply with state and federal regulations". To accomplish this goal, the City of Shoreline is consolidating its resources and coordinating this goal with the Growth Management Act (GMA) requirement to review and update the Comprehensive Plan (including transportation, stormwater and parks, recreation and open space plans) and development regulations by December 2004. We are also required to include the best available science (BAS) in these updates, specifically in the environmental and critical area regulations.

Due to the degree of changes anticipated in the updates to protective standards of the critical areas, and to keep the project on track while waiting for the final stream inventory reports as the basis for the best available science, the staff chose to split the project of updating the critical area regulations into two phases. We have separated the procedural issues from the substantive (protective) standards. The procedural issues are those that deal with administrative, quasi-judicial, legislative review, and appeal issues. This approach allows for a manageable review and adoption process of proposed changes.

The Planning Commission held public hearings to review the proposed changes to the critical areas administration and procedures on March 6, March 20, April 3 and April 17, 2003 and recommend adoption of the proposed changes.

## FINANCIAL IMPACT:

The Washington State Department of Community, Trade and Economic Development awarded the City of Shoreline a grant of $42,000 to update the Development Code environmental procedures and regulations. The review of remaining regulations is budgeted as part of the coordinated strategy for the compliance with state mandates.

## RECOMMENDATION

No action required. The purpose of the workshop is to review the recommended changes to the critical areas procedures and administration. Public hearing and the City Council decision on these changes are scheduled for May 12, 2003.

Approved By: City Manager ____ City Attorney ____

## INTRODUCTION

The Growth Management Act requires cities and counties to "adopt development regulations that protect critical areas that are required to be designated."[1] "In designating and protecting critical areas..., counties and cities shall **include the best available science**...to **protect the functions and values** of critical areas"[2] [emphasis added].

The Growth Management Act defines critical areas as:[3]

- Wetlands
- Fish and wildlife habitat conservation areas
- Aquifer recharge areas
- Geologically hazardous areas
- Frequently flooded areas

Due to the degree of changes anticipated in the protective standards of the critical areas, and to keep the project on track while waiting for the stream inventory reports, which will provide the best available science for the protective standards, the staff chose to split the project into two phases. We have separated the procedural issues from the substantive (protective) standards because they deal with administrative, quasi-judicial, legislative review, and appeal issues. This approach was endorsed for the Development Code adoption and it allows for more manageable review and adoption of proposed changes.

The current Shoreline Development Code includes the following chapters:

20.10 General Provisions
20.20 Definitions
20.30 Procedures and Administration
20.40 Zoning and Use Provisions
20.50 General Development Standards
20.60 Adequacy of Public Facilities
20.70 Engineering and Utilities Development Standards
20.80 Special Districts
20.90 North City Business District

The general provisions and definitions are contained in the first two chapters, as indicated by their titles. The third chapter, Chapter 20.30 SMC, contains the procedures for reviewing permits, designates the review process "type," and provides the decision criteria for land use permits, such as variances, conditional uses, special uses, subdivisions, etc. Development standards follow in the remaining chapters.

In the first phase, we are "weeding out" and clarifying the administrative and procedural changes currently included in the Critical Area Chapter (20.80), so they will be consistent with the Development Code Procedures and Administration Chapter (20.30).

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[1] RCW 36.70A.060(2).
[2] RCW 36.70A.172(1).
[3] RCW 36.70A.030(5).

Consistent organization of all procedures in one chapter will make it easier for the user to find and understand the review sequences for a specific permit type.

The second phase of revisions will include those revisions that will address the substance of the protection standards for the critical areas. When revisions to protection standards are proposed, the City will be required to document the best available science and demonstrate that the functions and values of the critical areas will be protected.

## BACKGROUND

The review of the critical area procedures uncovered a variety of weaknesses with the procedural and administrative requirements for the critical areas that are presently included in the Chapter 20.80 of the code, including the following main issues:

1. Duplication of critical areas administration and procedures with other administrative and procedural requirements of the Development Code;
2. Critical area special use permit criteria that are too vague;
3. Reasonable use provision criteria that are inconsistent with case law;
4. Miscellaneous inconsistencies and terminology.

The Planning Commission held public hearings and discussed the staff recommended changes on March 6, March 13, April 3 and April 17, 2003. The Commission recommended approval of all proposed changes by staff with exception of the change of the Critical Area Reasonable Use Permit from Type C to Type B action. (Please refer to Attachment B, the minutes of April 17, 2003 for the Commission's deliberation regarding this change.)

The public hearing in front of the City Council is scheduled for May 12, 2003.

## SUMMARY OF PROPOSED REVISIONS RECOMMENDED BY THE PLANNING COMMISSION AND STAFF AFTER THE PUBLIC REVIEW, COMMENTS, AND PUBLIC HEARING

Note: All proposed changes recommended are included in Attachment A. The proposed additions are underlined and eliminations are shown as strikethrough. In addition, we have included summaries of why these revisions are proposed in boxes alongside of the changed text.

### 1. Consolidating Critical Areas Administration and Procedures with other Administrative and Procedural Requirements of the Development Code

Where review procedures and decisions criteria for variances, subdivision, conditional uses, special use permit. etc. are integrated (Chapter 20.30, Procedures and Administration), the critical areas regulations currently contain their own sections regarding process, authority, and application requirements. Note that while the critical areas permits are listed as numbers 4 and 5 on Table 20.30.060 in the procedures chapter, the decision criteria are located at SMC 20.80.090 and 120, not in Chapter 20.30 SMC. At best, these critical areas procedural sections are duplicated. The

redundancy has the potential to create confusion (which section should a citizen look to?) and may be inconsistent (is authority determined by SMC 20.80.030 or SMC 20.10.030?).

To improve the code, the critical areas special use and reasonable use permit review criteria are proposed to be moved from the critical areas regulations to the procedural provisions.

2. Revisions to the Critical Area Special Use Permit

The decision-maker for critical areas special use permits would change from the City Council to the Hearing Examiner. This revision is proposed to maintain an appearance of fairness. Since the critical areas special use permit applies specifically to public projects, the City could find itself as the proponent *and* decision-maker, which could be awkward. Using a Hearing Examiner, who would be unconnected to any City project, helps to separate the proponent from the decision-maker for critical areas special use permits.

3. Revisions to the Critical Area Reasonable Use Permit

The criteria are revised to increase the reader's understanding of what a "reasonable use" is. These criteria are intended to apply in only limited instances, in which the critical areas standards would otherwise result in a constitutional "taking".

Changes proposed to the reasonable use permit as modified by the Planning Commission on April 17 are:

a) Update of the reasonable use permit criteria: The current reasonable use criteria are inconsistent with case law. The purpose of a reasonable use permit is not to allow general development within critical areas, but to only allow that minimal amount to avoid a constitutional taking. The Fifth Amendment states that one shall not be deprived of property without *due process* or *just compensation*. To do so, such as by requiring a buffer that precludes use of a piece of property, would be a "taking." If a court was to determine that the critical areas regulations resulted in a taking, the regulations could be thrown out, jeopardizing environmental protection. To avoid a taking, cities typically include a reasonable use provision that allows only the minimal "reasonable" use of a property for which otherwise development would be prohibited.

The criteria that are currently used appear to sound appropriate, but when reviewed closely, can be shown to conflict with case law. For example, the current criteria states that the applicant must demonstrate that no other use "is possible," which conflicts with the concept of "reasonable" use. Preservation of habitat is a "possible" use, but probably not "reasonable" for the property owner. Similarly, the current criteria include vague statements such as: "no feasible alternatives," and "the greatest extent possible".

b) New criteria to allow for modification of other standards, and establishing priority to resolve conflicts between multiple critical areas:

- Subsection C provides the Hearing Examiner with the authority to permit limited modifications (setbacks, landscaping, and parking) through the reasonable use

process if it would reduce the impact on the critical area. (Under the current code, one would have to apply for a variance to modify a setback to avoid an impact to a critical area.)

- Subsection D lists the critical area standards in the order that they should be considered by the Hearing Examiner for modification if a proposal impacts several critical areas. Example: to give special consideration to salmon, modifications to habitat areas should be considered last. (The current code provides no direction on which standard should be modified.)

The reasonable use criteria, as updated, attempts to walk the fine line between allowing constitutionally protected use while discouraging all other activities that would otherwise be inconsistent with the critical area standards.

4. Miscellaneous Revisions

In addition to the revisions described above, the changes proposed include various minor revisions to improve clarity and consistency, to use up-to-date terminology, to improve the organization, and to simplify the code when possible. For example:

*Scope* (SMC 20.10.040 and definitions of "development") – By expanding the definition of "development" to include changes to surface and ground waters, and changes of use, the development regulations would apply more broadly.

*Preapplication meetings* (SMC 20.30.080) – The revisions would require a preapplication meeting for projects proposed within a critical area *or buffer*. The current code does not require a preapplication meeting for projects proposed only within the buffer.

*Application requirements* (SMC 20.30.110) – The revisions would provide the City with authority to retain a qualified professional to review technical reports and studies.

*Zoning variance* (SMC 20.30.310) – The current code allows the variance process to be applied to critical areas buffers. The revisions would no longer allow variance of critical areas buffers. Any modification of buffers would need to follow the critical areas standards or the special use or reasonable use permit processes.

*Buffer modifications* (SMC 20.80.190) – In addition to the permit criteria and critical areas performance standards, the code includes this section that describes a vague process for reducing buffers. This section is inconsistent with the performance standards. The revisions propose to remove this section.

*Removal of General Critical Area Provisions* - The improvements and reorganization proposed to the critical areas regulations result in the removal of complete sections of code. These sections have been removed because they have been moved to the procedural section, revised, or because they may be duplicative or inconsistent with other sections.

*Rename the Special Districts Chapter to Critical Areas* - Currently, the critical areas regulations are a subset of the Special Districts chapter. The Special Districts chapter was established with the intent that it would contain various subchapters each corresponding to a subarea within the City. The critical areas are the only regulations contained in the Special Districts, Chapter 20.80 SMC.

When we included the North City Business District standards, we have codified them under new Chapter 20.90. To clarify the organization of the critical areas regulations, Chapter 20.80 would be renamed "Critical Areas".

**SEPA review:** The City of Shoreline determined that the proposed procedural changes in phase one, meet the definition of "procedure" and therefore are categorically exempt from SEPA. They do not increase exemptions or reduce protection standards and will not result in direct impacts on the environment. (WAC 197-11-800 (20) Procedural actions states:
"The proposal or adoption of legislation, rules, regulations, resolutions or ordinances, or of any plan or program relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment shall be exempt. Agency SEPA procedures shall be exempt."

The City of Shoreline will evaluate the impacts of the critical areas protective regulations in phase two, when the substance and environmental impacts of these regulations will be reviewed and amended. This working model (separation of procedures from substantive issues) for SEPA review was used during the preparation of the Development Code also.

**State and Agencies with Jurisdiction Review:** As required by GMA, we mailed the proposed changes to the critical areas procedures to the Washington State Office of Community Development on February 6, 2003 for the 60 days mandatory review period. (Attachment C.)

## RECOMMENDATION

No action required. The purpose of the workshop is to review the recommended changes to the critical areas procedures and administration. Public hearing and the City Council decision on these changes are scheduled for May 12, 2003.

**ATTACHMENTS**

| | |
|---|---|
| Attachment A: | Proposed Critical Areas Procedural and Administrative Revisions (Staff and Planning Commission Recommended Draft dated February 19, 2003, revised April 22, 2003) |
| Attachment B: | Planning Commission Minutes of March 3, March 20, April 3, and April 17, 2003 |
| Attachment C: | Receipt letter from Office of Community Development re. proposed changes to critical areas. |

# Attachment A

PROPOSED CRITICAL AREAS PROCEDURAL AND ADMINISTRATIVE REVISIONS

*PROPOSED CRITICAL AREAS PROCEDURAL AND ADMINISTRATIVE REVISIONS*

# Chapter 20.10
# General Provisions

***Only those sections within this chapter for which revisions are proposed are included here. Other sections, not shown here, may require renumbering.***

**20.10.020 Purpose.**
It is the purpose of this Code to:

- Promote the public health, safety, and general welfare;
- Guide the development of the City consistent with the Comprehensive Plan;
- Carry out the goals and policies of the Comprehensive Plan by the provisions specified in the Code;
- Provide regulations and standards that lessen congestion on the streets;
- Encourage high standards of development;
- Prevent the overcrowding of land;
- Provide adequate light and air;
- Avoid excessive concentration of population;
- Facilitate adequate provisions for transportation, utilities, schools, parks, and other public needs.
- Encourage productive and enjoyable harmony between man and his environment;
- Promote efforts which will prevent or eliminate damage to the environment and biosphere;
- ~~Enrich the understanding of~~Protect the functions and values of ecological systems and natural resources important to the public~~State and nation~~; and
- Encourage attractive, quality construction to enhance City beautification.

(Ord. 238 Ch. I § 2, 2000).

This statement is revised to be more direct, precise, and consistent with state law. The purpose is not simply to "understand," but to "protect" as required by RCW 36.70A.060.

**20.10.040 Scope.**
A. Hereafter, no development ~~no building or structure shall be erected, demolished, remodeled, reconstructed, altered, enlarged, or relocated~~shall occur except in

Paragraph A is simplified. New buildings, structures, uses, and other activities are included in the definition of "development." Therefore, they don't need to be repeated here.

compliance with the provisions of this Code and then only after securing all required permits and licenses.

B. Any building, structure, or use lawfully existing at the time of passage of this title, although not in compliance therewith, may be maintained as provided in Chapter 20.30 SMC, Subchapter 5, Nonconforming Uses and Structures. (Ord. 238 Ch. I § 4, 2000).

C. Nonproject development and land use actions, including but not limited to rezones, annexations, and the adoption of plans and programs, shall comply with the provisions of this Code.

Paragraph C (borrowing from SMC 20.80.060) is to clarify that the scope of the Title includes some nonproject actions.

**20.10.050 Roles and responsibilities.**

The elected officials, appointed commissions, Hearing Examiner, and City staff share the roles and responsibilities for carrying out the provisions of the Code.

The City Council is responsible for establishing policy and legislation affecting land use within the City. The City Council acts on recommendations of the Planning Commission or Hearing Examiner in legislative and quasi-judicial matters.

The Planning Commission is the designated planning agency for the City as specified by State law. The Planning Commission is responsible for a variety of discretionary recommendations to the City Council on land use legislation, Comprehensive Plan amendments and quasi-judicial matters. The Planning Commission duties and responsibilities are specified in the bylaws duly adopted by the Planning Commission.

The Hearing Examiner is responsible for quasi-judicial decisions designated by this Title and the review of administrative appeals.

SMC 20.10.050 is revised so that the description of the Hearing Examiner is consistent with his role as defined in SMC 20.30.060, where the Hearing Examiner has quasi-judicial authority for Critical Areas Special Use Permits.

The Director shall have the authority to administer the provisions of this Code, to make determinations with regard to the applicability of the regulations, to interpret unclear provisions, to require additional information to determine the level of detail and appropriate methodologies for required analysis, to prepare application and informational materials as required, to promulgate procedures and rules for unique circumstances not anticipated within the standards and

procedures contained within this Code, and to enforce requirements.

The rules and procedures for proceedings before the Hearing Examiner, Planning Commission, and City Council are adopted by resolution and available from the City Clerk's office and the Department. (Ord. 238 Ch. I § 5, 2000).

# Chapter 20.20
# Definitions

***Note: only those definitions that are new or include changes are shown here.***

| | |
|---|---|
| Development | The division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, clearing, or grading; ~~excavation, landfill, or land disturbance;~~ changes to surface or ground waters; or ~~and~~ any use, change of use, or extension of the use of land. |
| Building Footprint | The horizontal area of the ground encompassed by the exterior outline of a building. |
| Qualified Professional | A person with experience and training in the pertinent discipline. A qualified professional must have obtained a B.S. or B.A. or equivalent degree in a related field, and must be licensed to practice in the state of Washington in the related professional field, if such field is licensed. |
| Utility | ~~Persons or p~~Private or municipal corporations owning or operating, or proposing to own or operate facilities, that comprise a system or systems for public service. Private utilities include those gas, electric, telecommunications, or water companies that are subject to the jurisdiction of the state Utilities and Transportation Commission and that have not been classified as competitive by the commission. |

The definition for "development" is revised to ensure inclusion of development activities. Excavation, landfill, and land disturbance are removed from the definition because land modification activities are included within the definitions of clearing and grading. The term "changes to surface or ground waters" is added to cover actions that may not strictly be considered construction, but which directly impact waters.

The definition "building footprint" is added to support the reasonable use criteria in SMC 20.30.350.

The definition "qualified professional" is added to ensure that technical studies are completed only by those with appropriate expertise.

The definition of "utility" is revised to clarify what a utility is. Previously, the definition was broad enough that any "person operating a system" could claim to be a utility and therefore (arguably) qualify for specific exemptions.

# Chapter 20.30
# Procedures and Administration

***Only those sections within this chapter for which revisions are proposed are included here. Other sections, not shown here, may require renumbering. Otherwise, they will remain as is.***

**20.30.040 Ministerial decisions – Type A.**

These decisions are based on compliance with specific, nondiscretionary and/or technical standards that are clearly enumerated. These decisions are made by the Director and are exempt from notice requirements.

However, permit applications, including certain categories of building permits, and permits for projects ~~which may impact critical areas~~ that require a SEPA threshold determination, are subject to public notice requirements specified in Table 20.30.050 for SEPA threshold determination.

Table 20.30.050 referred to within the section includes notice requirements for projects that require a SEPA determination. The statement "which may impact critical areas" is unecessary and inconsistent, because noticing is triggered by SEPA, not the presence of critical areas.

All permit review procedures and all applicable regulations and standards apply to all Type A actions. The decisions made by the Director under Type A actions shall be final. The Director's decision shall be based upon findings that the application conforms (or does not conform) to all applicable regulations and standards.

**Table 20.30.040 – Summary of Type A Actions and Target Time Limits for Decision, and Appeal Authority**

| Action Type | Target Time Limits for Decision | Section |
|---|---|---|
| **Type A:** | | |
| 1. Accessory Dwelling Unit | 30 days | 20.40.120, 20.40.210 |
| 2. Lot Line Adjustment including Lot Merger | 30 days | 20.30.400 |
| 3. Building Permit | 120 days | All applicable standards |
| 4. Final Short Plat | 30 days | 20.30.450 |
| 5. Home Occupation, Bed and Breakfast, Boarding House | 120 days | 20.40.120, 20.40.250, 20.40.260, 20.40.400 |

| | | |
|---|---|---|
| 6. Interpretation of Development Code | 15 days | 20.10.050, 20.10.060, 20.30.020 |
| 7. Right-of-Way Use | 30 days | 20.70.240 – 20.70.330 |
| 8. Shoreline Exemption Permit | 15 days | Shoreline Master Program |
| 9. Sign Permit | 30 days | 20.50.530 – 20.50.610 |
| 10. Site Development Permit | 30 days | 20.30.430 |
| 11. Variances from Engineering Standards | 30 days | 20.30.290 |
| 12. Temporary Use Permit | 15 days | 20.40.100, 20.40.540 |
| 13. Clearing and Grading Permit | 60 days | 20.50.290 – 20.50.370 |

An administrative appeal authority is not provided for Type A actions, except that any Type A action which is ~~subject to a SEPA threshold determination~~not categorically exempt from environmental review under Chapter 43.21 RCW or for which environmental review has not been completed in connection with other project permits shall be appealable together with the SEPA threshold determination, as specified in Table 20.30.050.

This second paragraph of SMC 20.30.040 is revised to allow for appeals under SEPA consistent with state laws.

**20.30.050 Administrative decisions – Type B.**

The Director makes these decisions based on standards and clearly identified criteria. A neighborhood meeting, conducted by the applicant, shall be required, prior to formal submittal of an application (as specified in SMC 20.30.090). The purpose of such meeting is to receive neighborhood input and suggestions prior to application submittal.

Type B decisions require that the Director issues a written report that sets forth a decision to approve, approve with modifications, or deny the application. The Director's report will also include the City's decision under any required SEPA review.

All Director's decisions made under Type B actions are appealable in an open record appeal hearing. Such hearing shall consolidate with any appeals of SEPA negative threshold determinations. SEPA determinations of

significance are appealable in an open record appeal prior to the project decision.

All appeals shall be heard by the Hearing Examiner except appeals of shoreline substantial development permits, shoreline conditional use permits, and shoreline variances that shall be appealable to the State Shorelines Hearings Board.

**Table 20.30.050 – Summary of Type B Actions, Notice Requirements, Target Time Limits for Decision, and Appeal Authority**

| Action | Notice Requirements: Application and Decision (1), (2), (3) | Target Time Limits for Decision | Appeal Authority | Section |
|---|---|---|---|---|
| **Type B:** | | | | |
| 1. Binding Site Plan | Mail | 90 days | HE | 20.30.480 |
| 2. Conditional Use Permit (CUP) | Mail, Post Site, Newspaper | 90 days | HE | 20.30.300 |
| 3. Preliminary Short Subdivision | Mail, Post Site, Newspaper | 90 days | HE | 20.30.410 |
| 4. SEPA Threshold Determination | Mail, Post Site, Newspaper | 60 days | HE | 20.30.490 – 20.30.710 |
| ~~5. Critical Areas Reasonable Use Permit~~ | ~~Mail, Post Site, Newspaper~~ | ~~120 days~~ | ~~HE~~ | ~~20.30.350~~[1] |
| ~~5~~6. Shoreline Substantial Development Permit, Shoreline Variance and Shoreline CUP | Mail, Post Site, Newspaper | 120 days | State Shorelines Hearings Board | Shoreline Master Program |
| ~~6~~7. Zoning Variances | Mail, Post Site, Newspaper | 90 days | HE | 20.30.310 |

Key: HE = Hearing Examiner

(1) Public hearing notification requirements are specified in SMC 20.30.120.

(2) Notice of application requirements are specified in SMC 20.30.120.

(3) Notice of decision requirements are specified in SMC 20.30.150.

[1] Change by the Planning Commission on 4/17/03 to the recommended draft 2/19/03

(Ord. 299 § 1, 2002; Ord. 238 Ch. III § 3(b), 2000).

**20.30.060 Quasi-judicial decisions – Type C.**

These decisions are made by the City Council or the Hearing Examiner, as shown in Table 20.30.060, and involve the use of discretionary judgment in the review of each specific application.

Prior to submittal of an application for any Type C permit, the applicant shall conduct a neighborhood meeting to discuss the proposal and to receive neighborhood input as specified in SMC 20.30.090.

Type C decisions require findings, conclusions, an open record public hearing and recommendations prepared by the review authority for the final decision made by the City Council or Hearing Examiner. Any administrative appeal of a SEPA threshold determination shall be consolidated with the open record public hearing on the project permit, except a determination of significance, which is appealable under SMC 20.30.050.

There is no administrative appeal of Type C actions.

SMC 20.30.060 and the following table are revised to provide the Hearing Examiner with decision authority for Critical Areas Special Use Permits.

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

| Action | Notice Requirements for Application and Decision (5), (6) | Review Authority, Open Record Public Hearing (1) | Decision Making Authority (Public Meeting) | Target Time Limits for Decisions | Section |
|---|---|---|---|---|---|
| **Type C:** | | | | | |
| 1. Preliminary Formal Subdivision | Mail, Post Site, Newspaper | PC (3) | City Council | 120 days | 20.30.410 |
| 2. Rezone of Property(2) and Zoning Map Change | Mail, Post Site, Newspaper | PC (3) | City Council | 120 days | 20.30.320 |
| 3. Special Use Permit (SUP) | Mail, Post Site, Newspaper | PC (3) | City Council | 120 days | 20.30.330 |
| 4. Critical Areas Special Use Permit | Mail, Post Site, Newspaper | HE (4) | HE (4)~~City Council~~ | 120 days | 20.80<u>30</u>.090<u>333</u> |
| <u>5. Critical Area Reasonable Use Parmit ~~Approval~~</u> | <u>Mail, Post Site, Newspaper</u> | <u>HE (4)</u> | <u>HE (4)</u> | <u>120 days</u> | ~~20.80.120~~ <u>20.30.336[2]</u> |
| <u>6</u>. Final Formal Plat | None | Review by the Director – no hearing | City Council | 30 days | 20.30.450 |

(1) Including consolidated SEPA threshold determination appeal.

(2) The rezone must be consistent with the adopted Comprehensive Plan.

(3) PC = Planning Commission

(4) HE = Hearing Examiner

(5) Notice of application requirements are specified in SMC 20.30.120.

(6) Notice of decision requirements are specified in SMC 20.30.150.

(Ord. 299 1, 2002; Ord. 238 Ch. III 3(c), 2000).

The criteria for Critical Areas Special Use Permits, which are decisions based on review of technical information, has been revised to be more objective (see page 13) and would be decided by the Hearing Examiner.

[2] Change by the Planning Commission on 4/17/03 to the recommended draft 2/19/03

**20.30.080 Preapplication meeting.**

A preapplication meeting is required prior to submitting an application for any Type B or Type C action and/or for an application for a project located within a critical area or its buffer.

Applicants for development permits under Type A actions are encouraged to participate in preapplication meetings with the City. Preapplication meetings with staff provide an opportunity to discuss the proposal in general terms, identify the applicable City requirements and the project review process.

Preapplication meetings are required prior to the neighborhood meeting.

The Director shall specify submittal requirements for preapplication meetings. Plans presented at the preapplication meeting are nonbinding and do not "vest" an application. (Ord. 238 Ch. III § 4(a), 2000).

The preapplication meeting requirements are revised to include projects that are within a critical area buffer so that critical area requirements are understood at the beginning of the permit process.

Added is a sentence authorizing the Director to require materials to be submitted for preapplication meetings.

**20.30.110 Determination of completeness.**

A. An application shall be determined complete when:

1. It meets the procedural requirements of the City of Shoreline;

2. All information required in specified submittal requirements for the application has been provided, and is sufficient for processing the application, even though additional information may be required. The City may, at its discretion and at the applicant's expense, retain a qualified professional to review and confirm the applicant's reports, studies and plans.

See new definition of "qualified professional" on page 4.

B. Within 28 days of receiving a permit application for Type A, B and/or C applications, the City shall mail a written determination to the applicant stating whether the application is complete, or incomplete and specifying what is necessary to make the application complete. If the

Department fails to provide a determination of completeness, the application shall be deemed complete on the twenty-ninth day after submittal.

C. If the applicant fails to provide the required information within 90 days of the date of the written notice that the application is incomplete, or a request for additional information is made, the application shall be deemed null and void. The applicant may request a refund of the application fee minus the City's cost of processing.

D. The determination of completeness shall not preclude the City from requesting additional information or studies if new information is required or substantial changes are made to the proposed action. (Ord. 238 Ch. III § 4(d), 2000).

**20.30.310 Zoning variance (Type B action).**

A. **Purpose.** A zoning variance is a mechanism by which the City may grant relief from the zoning provisions and standards of the Code, where practical difficulty renders compliance with the Code an unnecessary hardship.

B. **Decision Criteria.** A variance shall be granted by the City, only if the applicant demonstrates all of the following:

1. The variance is necessary because of the unique size, shape, topography, or location of the subject property;

2. The strict enforcement of the provisions of this title creates an unnecessary hardship to the property owner;

3. The subject property is deprived, by provisions of this title, of rights and privileges enjoyed by other properties in the vicinity and under an identical zone;

4. The need for the variance is not the result of deliberate actions of the applicant or property owner, including any past owner of the same property;

5. The variance is compatible with the Comprehensive Plan;

6. The variance does not create a health or safety hazard;

7. The granting of the variance will not be materially detrimental to the public welfare or injurious to:

   a. The property or improvements in the vicinity, or

   b. The zone in which the subject property is located;

8. The variance does not relieve an applicant from:

   a. Any of the procedural or administrative provisions of this title, or

   b. Any standard or provision that specifically states that no variance from such standard or provision is permitted, or

   c. Use or building restrictions, or

   d. Any provisions of the critical areas development standards~~overlay district requirements, except for the required buffer widths~~;

9. The variance from setback or height requirements does not infringe upon or interfere with easement or covenant rights or responsibilities;

General modifications to critical area buffers should be considered through the application of the critical areas regulations rather than through the variance process. All other exceptions from the critical areas requirements should be obtained through the Special Use and Reasonable Use permits.

10. The variance does not allow the establishment of a use that is not otherwise permitted in the zone in which the proposal is located; or

11. The variance is the minimum necessary to grant relief to the applicant. (Ord. 238 Ch. III § 7(c), 2000).

**~~20.80.090~~ 20.30.333 Critical areas special use permit (Type C action).**

A. Purpose. The purpose of the critical areas special use permit is to allow development by a public agency or utility when ~~If~~ the strict application of the critical areas standards~~is chapter~~ would otherwise unreasonably prohibit the provision~~a development~~ of public services.~~proposal by a private applicant, public agency or public utility, the applicant, agency or utility may apply for a special use permit pursuant to this section. Applications for a critical area special use permit shall be considered a Type C application.~~

~~A. The applicant, public agency or utility shall apply to the Department and shall make available to the Department all related project documents such as permit applications to other agencies, special studies and SEPA documents. The Department shall prepare a recommendation to the Hearing Examiner.~~

B. Decision Criteria. A critical areas special use permit shall be granted by the City only if the applicant demonstrates that:~~The Hearing Examiner shall review the application and conduct a public hearing. The Hearing Examiner shall make a recommendation to the City Council based on the following criteria:~~

1. ~~That t~~The application of the critical areas development standards, Chapter 20.80 SMC, would unreasonably restrict the ability of the public agency or utility to provide services to the public; and~~proposed special use is in the public benefit~~;

2. There ~~are~~ is no other practical alternatives to the ~~proposed development which~~proposal by the public agency or utility that would cause less impact on the critical area; and

SMC 20.80.090 is focused on public and utility projects and is relocated to be listed with other permit types.

While developments located on individual sites may be allowed by a reasonable use permit (20.30.336), some public and utility projects, such as roads and utility lines (that would not be covered by the reasonable use criteria), cannot feasibly be rerouted around critical areas. This permit would allow for and be limited to such projects.

See revised definition of "utility" on page 4.

The current critical area special use criteria are an adaptation of King County's public utility exception. The modifications that have occurred in the past have opened up the critical area special use permit to be used for any type of project with little control over impacts. Restoration of some specific language and criteria limits this process to only those necessary utilities or services that could not otherwise be constructed.

~~3. The proposal minimizes the impact on identified critical areas based on the implementation of adaptive management plans.~~

3. The proposed development does not create a health or safety hazard on or off the development site, will not be materially detrimental to the property or improvements in the vicinity; and

4. This special use permit process shall not allow the use of the following critical areas for regional retention/detention facilities except where the Hearing Examiner makes a finding that the facility is necessary to protect public health and safety or repair damaged natural resources:

   a. Type I streams or buffers;

   b. Type I wetlands or buffers with plant associations of infrequent occurrence; or

   c. Type I or II wetlands or buffers which provide critical or outstanding habitat for herons, raptors or State or Federal designated endangered or threatened species unless clearly demonstrated by the applicant, using best available science, that there will be no impact on such habitat. (Ord. 238 Ch. VIII 1(I), 2000).

**20.~~80~~30.~~120~~ 336 Reasonable use ~~permit~~provision (Type C action).**

A. Purpose. The purpose of the reasonable use permit is to allow~~The standards and requirements of these regulations are not intended, and shall not be construed or applied in a manner to deny all reasonable economic use~~ development and use of private property when the strict application of the critical area standards would otherwise ~~. If an applicant demonstrates to the satisfaction of the Hearing Examiner that strict application of these standards would~~ deny all reasonable ~~economic~~ use of a property~~, development may be permitted subject~~

~~to appropriate conditions. Applications for reasonable use exemption shall be considered a Type C application.~~

B. Decision Criteria. A reasonable use permit shall be granted by the City only if the applicant demonstrates that~~To obtain relief from the strict application of these standards, an applicant shall demonstrate all of the following~~:

1. The application of the development standards would deny all reasonable use of the property; and
2. There is ~~N~~no other reasonable use of the property with less impact on the critical area ~~and the buffer is feasible or possible~~; and

~~2. There are no feasible and reasonable on-site alternatives to the activities proposed, such as possible changes in site layout, reductions in density and similar factors; and~~

3. Any alterations to the critical area would be the minimum necessary to allow for reasonable use of the property~~The proposed activities, as conditioned, will minimize to the greatest extent possible potential impacts to the affected critical areas~~; and
4. The proposed development does not create a health or safety hazard on or off the development site, will not be materially detrimental to the property or improvements in the vicinity, is consistent with the general purposes of this Title and the public interest, and ~~A~~all reasonable mitigation measures have been implemented or assured.~~; and~~

~~5. The inability to derive reasonable economic use is not the result of the applicant's actions. The purchase price of the property or other investment derived expectations shall not be construed to be an applicant's action.~~

~~6. The applicant must demonstrate that the use would not cause a hazard to life, health, or property. (Ord. 238 Ch. VIII 1(L), 2000)~~.

The decision criteria for a reasonable use permit are refined to be more consistent with legal recognition of a "reasonable use." The reasonable use allowance is necessary to avoid the constitutional "taking" of property through regulation. If the criteria is too broad the process could be used to sidestep critical areas standards; if too narrow a taking may occur, which could invalidate the critical area regulations.

The word "economic" is removed because economic use is considered in some takings cases, but not all. It is possible (albeit unlikely) to result in a takings without eliminating the economic use of the property. Therefore, by limiting the term to "reasonable use" it applies inclusively to situations where there is a "reasonable *economic* use."

C. **Development standards.** To allow for reasonable use of property and to minimize impacts on critical areas the decision making authority may reduce setbacks by up to 50 percent, parking requirements by up to 50 percent, and may eliminate landscaping requirements. Such reductions shall be the minimum amount necessary to allow for reasonable use of the property, considering the character and scale of neighboring development.

D. **Priority.** When multiple critical areas may be impacted, the decision making authority should consider exceptions to critical areas standards that occur in the following order of priority and that result in the least overall impact:

1. Aquifer recharge areas;
2. Flood hazard areas;
3. Geologic hazard area buffers;
4. Wetland buffers;
5. Stream buffers;
6. Fish and wildlife habitat conservation area buffers; and
7. Geological hazard area, wetland, stream, and habitat area protection standards in the order listed above in items 3 through 6.

Section C is added to emphasize that it is more acceptable to vary from some development standards than to allow impacts to critical areas. For example, it is more preferable to allow an exception to a setback than an exception to a habitat buffer.

Section D is added to give a general priority to the exceptions that might be granted. Recognizing a requirement and desire to give greater protection to fish and wildlife, non-habitat alterations should be considered prior to habitat alterations. The first paragraph of D uses "should" rather than "shall" to retain some flexibility for odd cases in which the geological hazard, for example, might be more significant than the wetland.

**20.30.410 Preliminary subdivision review procedures and criteria.**

The preliminary short subdivision may be referred to as a short plat – Type B action.

The preliminary formal subdivision may be referred to as long plat – Type C action.

Review criteria: The following criteria shall be used to review proposed subdivisions:

A. Environmental.

1. Where environmental resources exist, such as trees, streams, ravines or wildlife habitats, the proposal shall be designed to fully implement the goals, policies, procedures and standards of the critical areas ~~overlay district~~ chapter, Chapter 20.80 SMC, Critical Areas ~~Special Districts,~~ and the tree conservation, land clearing and site grading standards sections.

Paragraph 1 is revised to acknowledge the name change of the Critical Areas Chapter.

2. The proposal shall be designed to minimize grading by using shared driveways and by relating street, house site and lot placement to the existing topography.

3. Where conditions exist which could be hazardous to the future residents of the land to be divided, or to nearby residents or property, such as, flood plains, steep slopes or unstable soil or geologic conditions, a subdivision of the hazardous land shall be denied unless the condition can be permanently corrected, consistent with subsections (A)(1) and (2) of this section.

4. The proposal shall be designed to minimize off-site impacts, especially upon drainage and views.

B. Lot and Street Layout.

1. Lots shall be designed to contain a usable building area. If the building area would be difficult to develop, the lot shall be redesigned or eliminated, unless special conditions can be imposed that will ensure the lot is developed consistent with the standards of this Code and does not create nonconforming structures, uses or lots.

2. Lots shall not front on primary or secondary highways unless there is no other feasible access. Special access provisions, such as, shared driveways, turnarounds or frontage streets may be required to minimize traffic hazards.

3. Each lot shall meet the applicable dimensional requirements of the Code.

4. Pedestrian walks or bicycle paths shall be provided to serve schools, parks, public facilities, shorelines and streams where street access is not adequate.

C. Dedications.

1. The City Council may require dedication of land in the proposed subdivision for public use.

2. Only the City Council may approve a dedication of park land. The council may request a review and written recommendation from the Planning Commission.

3. Any approval of a subdivision shall be conditioned on appropriate dedication of land for streets, including those on the official street map and the preliminary plat.

4. Dedications to the City of Shoreline for the required right-of-way, stormwater facilities, open space, and easements and tracts may be required as a condition of approval.

D. Improvements.

1. Improvements which may be required, but are not limited to, streets, curbs, pedestrian walks and bicycle paths, critical area enhancements, sidewalks, street landscaping, water lines, sewage systems, drainage systems and underground utilities.

2. Improvements shall comply with the development standards of Chapter 20.60 SMC, Adequacy of Public Facilities.

Time limit: Approval of a preliminary formal subdivision or preliminary short subdivision shall expire and have no further validity at the end of three years of preliminary approval. (Ord. 299 § 1, 2002; Ord. 238 Ch. III § 8(f), 2000).

**20.30.560 Categorical exemptions – Minor new construction.**

The following types of construction shall be exempt, except when undertaken wholly or partly on lands covered by water, the proposal would alter the existing conditions within ~~an environmentally sensitive area~~critical area or buffer, or a rezone or any license governing emissions to the air or discharges to water is required.

A. The construction or location of any residential structures of four dwelling units.

B. The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet of gross floor area, and with associated parking facilities designed for 20 automobiles.

C. The construction of a parking lot designed for 20 automobiles.

D. Any landfill or excavation of 500 cubic yards throughout the total lifetime of the fill or excavation; any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder.

This section on SEPA exemptions, SMC 20.30.560, is revised to update the terminology. Sensitive areas are now refered to, locally and by the state, as "critical areas."

Eventually, it will be appropriate to remove the exception clause completely. When the critical areas regulations are fully updated they will provide protection for critical areas and lands covered by water making it unnecessary to require an additional review through SEPA. This change will likely be proposed during the next round of revisions.

***So that it is clear what changes are and are not proposed at this time, all sections of the firs two subchapters of Chapter 20.80 SMC (from SMC 20.80.005 to 20.80.230) are shown here, even when no revisions are proposed to specific sections. The revisions shown here are intended to improve the organization and procedural consistency of the critical areas regulations with the City's development regulations. Additional changes to this chapter will be proposed during the next phase of revisions that address critical areas protection measures.***

~~Chapter 20.850~~
~~Special Districts~~

To clarify that critical areas regulations apply throughout the City, wherever there are critical areas, the "Special Districts" title would be removed, along with the first general paragraph, and renamed "Critical Areas." (Critical areas are the only regulations contained within the Special Districts Chapter.)

~~**20.805.005 Purpose.**~~
~~The purpose of this chapter is to establish specific standards, consistent with the Comprehensive Plan, for:~~
~~A. Critical areas;~~

~~B. Sub-area plans;~~

~~CB. Master plans for public facilities and institutions;~~

~~DC. Unique historical, cultural, and/or environmental resources;~~

~~The special districts shall be established by the legislative decision process, subject to the review and/or decisions criteria specified in SMC 20.30.350.~~

~~The special district shall establish regulations that in some way modify or supplement the zoning and use provisions (Chapter 20.40 SMC), the development standards (Chapter 20.50 SMC), and engineering/utility development standards (Chapter 20.70 SMC). (Ord. 238 Ch. VIII, 2000).~~

Chapter 20.80 SMC, which only includes regulations applying to critical areas, is renamed "Critical Areas," and references to an overlay district are removed.

There are no other codified subareas in SMC 20.80 at this time (the North City standards are codified under Chapter 20.90 SMC). A new chapter is created, SMC 20.85, to accommodate future codification of subarea standards.

# Chapter 20.80
# ~~Special Districts~~ Critical Areas

## Subchapter 1. Critical Areas – ~~Administration~~General Provisions

**20.80.010 Purpose.**

A. The purpose of this ~~sub~~chapter is to establish ~~special~~ supplemental standards for the protection of critical areas in compliance with the provisions of the Washington Growth Management Act of 1990 (Chapter 36.70A RCW) and consistent with the goals and policies of the Shoreline

Comprehensive Plan in accordance with the procedures of Chapter 20.30 SMC ~~and to supplement other requirements contained in the City of Shoreline Development Code for the purpose of regulating development of lands located within the critical area overlay district, based on the existence of critical areas as defined in this chapter~~.

B. By identifying and regulating development and alterations to critical areas and their buffers it is the intent of this chapter to:

1. Protect the public from injury, loss of life, property damage or financial losses due to flooding, erosion, landslide, seismic events, soils subsidence or steep slope failure;
2. Protect unique, fragile and valuable elements of the environment~~, including streams, wetlands, fish and wildlife and fish and wildlife habitat~~;
3. Reduce cumulative adverse environmental impacts to water quality, wetlands, streams and other aquatic resources, fish and wildlife habitat, steeps slopes and geologically unstable features;
4. Meet the requirements of the National Flood Insurance Program and maintain the City of Shoreline as an eligible community for Federal flood insurance benefits;
5. Ensure the long-term protection of ground and surface water quality;
6. Alert members of the public, including: appraisers, assessors, owners, potential buyers, or lessees, to the development limitations of critical areas and their required buffers;
7. ~~Provide standards, guidelines, and criteria to guide application of these critical areas overlay goals when considered with other goals and policies of the City of Shoreline Municipal Code and City of Shoreline Comprehensive Plan, including those pertaining to natural features and environmental protection;~~
8. Serve as a basis for exercise of the City's substantive authority under the State Environmental Policy Act (SEPA) and the City's Environmental

Paragraph A is revised to make it more precise and to be compatible with the Title's section on applicability.

Sections under B are revised to remove references to criteria, applications, and permitting, which are now addressed in the administrative sections of the Title. A portion of paragraph 2 is removed so that other types of areas are not ignored.

Procedures (Chapter 20.30 SMC, Subchapter 8); and comply with the requirements of the Growth Management Act (Chapter 36.70A RCW) and it's implementing rules; ~~and coordinate environmental review and permitting of proposals to avoid duplication and delay consistent with Chapter 36.70B RCW~~;

~~9~~8. Establish standards and procedures that are intended to protect environmentally critical areas while accommodating the rights of property owners to use their property in a reasonable manner; and

~~10~~9. Provide for the management of critical areas to maintain their functions and values and to restore degraded ecosystems. (Ord. 238 Ch. VIII 1(A), 2000).

**~~20.80.020 Description.~~**

~~The City of Shoreline hereby establishes a generalized critical areas overlay district which includes those lands, mapped and unmapped, as described in the following subchapters. Properties which contain one or more of the following established critical areas and their buffers shall be included within the critical areas overlay district for the City of Shoreline, and shall be subject to the requirements of the underlying zone classification and to the additional requirements imposed for the overlay district. In the case where the provisions for the overlay district conflict with the provisions of the underlying zone, the provision which provides the most protection for the natural environment shall apply. (Ord. 238 Ch. VIII 1(B), 2000).~~

By renaming the Special Districts Chapter it is no longer necessary to declare a description of the "district" to which these regulations apply and removal of the section improves consistency with the Title's sections on applicability.

**~~20.80.030 Authority.~~**

~~The Planning Director shall have the authority to administer the provisions of this chapter, to make determinations with regard to the applicability of the regulations, to interpret unclear provisions, to require additional information to determine the level of detail and appropriate methodologies for resource analysis, to prepare application and informational materials as required, to promulgate procedures and rules for unique circumstances not anticipated within the standards and procedures contained within this chapter, and to enforce requirements. (Ord. 238 Ch. VIII 1(C), 2000).~~

The authority of the code is established in SMC 20.10.050. It is unnecessary to repeat the declaration here in SMC 20.80.030.

**20.80.~~040~~ 020 Critical areas maps.**

A. The approximate location and extent of identified critical areas within the City's planning area are shown on the

critical areas maps adopted as part of this chapter ~~(Comprehensive Plan Maps)~~. These maps shall be used for informational purposes only to assist property owners and other interested parties. Boundaries and locations indicated on the maps are generalized. Critical areas and their buffers may occur within the City which have not previously been mapped.

B. The actual presence or absence, type, extent, boundaries, and classification of critical areas shall be identified in the field by a qualified consultant, and determined by the City, according to the procedures, definitions and criteria established by this chapter. In the event of any conflict between the critical area location or designation shown on the City's maps and the criteria or standards of this chapter, the criteria and standards shall prevail.

C. The critical areas maps shall be periodically updated by the City and shall reflect any permit activity, results of special studies and reports reviewed and approved by the City, amendments to the Comprehensive Plan Environmental Element and Department identified errors and corrections. (Ord. 238 Ch. VIII 1(D), 2000).

~~**20.80.050 Applicability.**~~

~~A. Unless explicitly exempted, the provisions of this chapter shall apply to all land uses and within all zoning designation in the City of Shoreline. All persons within the City shall comply with the requirements of this chapter.~~

~~B. The City shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water or vegetation or to construct or alter any structure or improvement without first assuring compliance with the requirements of this chapter.~~

~~C. Approval of a development proposal pursuant to the provisions of this chapter does not discharge the obligation of the applicant to comply with the provisions of this chapter.~~

~~D. When any provisions of any other section of the City Code conflicts with this chapter or when the provisions of this chapter are in conflict, that provision which provides more protection to critical areas shall apply unless specifically provided otherwise in this chapter or unless such~~

As with the Authority section, SMC 20.80.050 duplicates the sections in the general provisions and it is unnecessary to repeat these provisions here.

~~provision conflicts with Federal or State laws or regulations.~~

~~E. The provisions of this chapter shall apply to any forest practices over which the City has jurisdiction pursuant to Chapter 76.09 RCW and WAC Title 222. (Ord. 238 Ch. VIII 1(E), 2000).~~

**~~20.80.060 Regulated activities.~~**

~~A. The provisions of this chapter shall apply to any nonexempt activity that has a potential to impact a critical area or its established buffer. Such activities include but are not limited to:~~

~~1. Removing, excavating, disturbing or dredging soil, sand, gravel, minerals, organic matter or materials of any kind;~~

~~2. Dumping, discharging or filling with any material;~~

~~3. Draining, flooding or disturbing the water level or water table;~~

~~4. Driving pilings or placing obstructions;~~

~~5. Constructing, reconstructing, demolishing or altering the size of any structure or infrastructure or the addition of any impervious surface coverage to a site located within a critical area or it's buffer, unless otherwise exempted;~~

~~6. Destroying or altering vegetation through clearing, grading, harvesting, shading or planting vegetation that would alter the character of a critical area, including tree cutting, brush clearing, pruning, and other methods of vegetation alteration;~~

~~7. Activities that result in significant changes in water temperature, and/or the physical or chemical characteristics of water sources, including water quantity and water quality; and~~

~~8. Any other activity that has a potential to impact a critical area or established buffer not otherwise exempt from the provisions of this chapter.~~

~~B. To avoid duplication, the following permit application, review and approvals shall be subject to, and coordinated with, the requirements of this chapter: clearing and grading; subdivision or short subdivision; building;~~

Applicability of critical areas regulations is addressed in SMC 20.10.040. These sections are removed to prevent inconsistency.

~~conditional use; shoreline substantial development; variance; special use; binding site plan, and any other permits leading to the development or alteration of land.~~

~~C. Applications for nonproject action, including but not limited to rezones, annexations, and the adoption of plans and programs, may be required to, at the City's direction, perform studies or evaluations required by this chapter using methodologies and at a level of detail appropriate to the action proposed. (Ord. 238 Ch. VIII 1(F), 2000).~~

**20.80.~~070~~ 030Exemptions.**

The following activities shall be exempt from the provisions of this ~~sub~~chapter:

No changes to the exemptions listed in SMC 20.80.070 (now 030) are proposed at this time.

A. Alterations in response to emergencies which threaten the public health, safety and welfare or which pose an imminent risk of damage to private property as long as any alteration undertaken pursuant to this subsection is reported to the City as soon as possible. Only the minimum intervention necessary to reduce the risk to public health, safety, or welfare and/or the imminent risk of damage to private property shall be authorized by this exemption. The City shall confirm that an emergency exists and determine what, if any, additional applications and/or measures shall be required to protect the environment consistent with the provisions of this chapter, and to repair any damage to a preexisting resource;

B. Public water, electric and natural gas distribution, public sewer collection, cable communications, telephone, utility and related activities undertaken pursuant to City-approved best management practices, and best available science with regard to protection of threatened and endangered species, as follows:

1. Normal and routine maintenance or repair of existing utility structures or rights-of-way;
2. Relocation of electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less, only when required by the City of Shoreline, which approves the new location of the facilities;
3. Replacement, operation, repair, modification or installation or construction in an improved City road

right-of-way or City authorized private roadway of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less;

4. Relocation of public sewer local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment or appurtenances, only when required by the City of Shoreline, which approves the new location of the facilities; and

5. Replacement, operation, repair, modification, relocations, installation or construction of public sewer local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment or appurtenances when such facilities are located within an improved public right-of-way or City authorized private roadway.

C. Maintenance, operation, repair, modification or replacement of publicly improved roadways and associated stormwater drainage systems as long as any such alteration does not involve the expansion of roadways or related improvements into previously unimproved rights-of-way or portions of rights-of-way;

D. Maintenance, operation or repair of publicly improved recreation areas as long as any such activity does not involve the expansion of uses and/or facilities into a previously unimproved portion of a preexisting area. Maintenance, operation and repair of publicly improved recreation areas within designated fish and wildlife habitat areas shall be permitted if all activities are performed consistent with the development standards of this chapter, best available science or adaptive management plans as recognized by the City;

E. Activities involving artificially created wetlands or streams intentionally created from nonwetland sites, including but not limited to grass-lined swales, irrigation and drainage ditches, detention facilities and landscape features, except wetlands, streams or swales created as mitigation or that provide or contribute to critical habitat for salmonid fishes;

F. Activities affecting Type IV wetlands which are individually smaller than 1,000 square feet and/or cumulatively smaller than 2,500 square feet in size;

G. Activities occurring in areas which may be considered small steep slopes (areas of 40 percent slope or greater with a vertical elevation change of up to, but not greater than 20 feet), such as berms, retaining walls, excavations and small natural slopes, and activities on steep slopes created through prior legal grading activity may be exempted based upon City review of a soils report prepared by a qualified geologist or geotechnical engineer which demonstrates that no adverse impact will result from the exemption;

H. Site investigative work and studies necessary for preparing land use applications, including soils tests, water quality studies, wildlife studies and similar tests and investigations; provided, that any disturbance of the critical area shall be the minimum necessary to carry out the work or studies;

I. 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;

J. Normal and routine maintenance and operation of existing landscaping and gardens provided they comply with all other regulations in this chapter;

K. Minor activities not mentioned above and determined by the City to have minimal impacts to a critical area;

L. Notwithstanding the exemptions provided by this section, any otherwise exempt activities occurring in or near a critical area should meet the purpose and intent of SMC 20.80.010 and should consider on-site alternatives that avoid or minimize impacts. (Ord. 238 Ch. VIII 1(G), 2000).

**20.80.~~080~~ 040 Partial exemptions.**

A. The following are exempt from the provisions of this chapter except for the notice to title provisions and the flood hazard area provisions, if applicable.

1. Structural modification of, addition to, or replacement of structures, except single detached residences, in existence before November 27, 1990, which do not meet the building setback or buffer requirements for wetlands, streams or steep slope hazard areas if the modification, addition, replacement or related activity does not increase the existing building footprint of the structure lying within the above-described building setback area, sensitive area or buffer;

2. Structural modification of, addition to, or replacement of single detached residences in existence before November 27, 1990, which do not meet the building setback or buffer requirements for wetlands, streams or steep slope hazard areas if the modification, addition, replacement or related activity does not increase the existing footprint of the residence lying within the above-described buffer or building setback area by more than 750 square feet over that existing before November 27, 1990, and no portion of the modification, addition or replacement is located closer to the critical area or, if the existing residence is within the critical area, extend farther into the critical area; and

3. Maintenance or repair of structures which do not meet the development standards of this chapter for landslide or seismic areas if the maintenance or repair does not increase the footprint of the structure and there is no increased risk to life or property as a result of the proposed maintenance or repair.

B. A permit or approval sought as part of a development proposal for which multiple permits are required is exempt from the provisions of this chapter, except for the notice to title provisions, as applicable if:

1. The City of Shoreline has previously reviewed all critical areas on the site; and

2. There is no material change in the development proposal since the prior review; and

3. There is no new information available which may alter previous critical area review of the site or a particular critical area; and

4. The permit or approval under which the prior review was conducted has not expired or, if no expiration

date, no more than five years have lapsed since the issuance of that permit or approval; and

5. ~~The site is not located within a critical fish and wildlife habitat area; and~~

6. The prior permit or approval, including any conditions, has been complied with. (Ord. 238 Ch. VIII 1(H), 2000).

Paragraph 5 is removed so that all types of critical areas are processed consistently.

~~**20.80.090 Critical area special use permit.**~~

~~If the application of this chapter would prohibit a development proposal by a private applicant, public agency or public utility, the applicant, agency or utility may apply for a special use permit pursuant to this section. Applications for a critical area special use permit shall be considered a Type C application.~~

~~A. The applicant, public agency or utility shall apply to the Department and shall make available to the Department all related project documents such as permit applications to other agencies, special studies and SEPA documents. The Department shall prepare a recommendation to the Hearing Examiner.~~

~~B. The Hearing Examiner shall review the application and conduct a public hearing. The Hearing Examiner shall make a recommendation to the City Council based on the following criteria:~~

~~1. That the proposed special use is in the public benefit;~~

~~2. There are no other practical alternatives to the proposed development which would cause less impact on the critical area; and~~

~~3. The proposal minimizes the impact on identified critical areas based on the implementation of adaptive management plans.~~

~~4. This special use permit process shall not allow the use of the following critical areas for regional retention/detention facilities except where the Hearing Examiner makes a finding that the facility is necessary to protect public health and safety or repair damaged natural resources:~~

~~a. Type I streams or buffers;~~

~~b. Type I wetlands or buffers with plant associations of infrequent occurrence; or~~

SMC 20.80.090 is moved to Chapter 20.30 to be listed along with other permit types. See SMC 20.30.333 of the proposed revisions.

c. Type I or II wetlands or buffers which provide critical or outstanding habitat for herons, raptors or State or Federal designated endangered or threatened species unless clearly demonstrated by the applicant, using best available science, that there will be no impact on such habitat. (Ord. 238 Ch. VIII 1(I), 2000).

**20.80.100 Permit process and application requirements.**

A. **Preapplication Conference.** All applicants are encouraged to meet with the City prior to submitting an application subject to this chapter. The purpose of this meeting shall be to discuss the City's critical area requirements, processes and procedures; to review any conceptual site plans prepared by the applicant; to identify potential impacts to critical areas and appropriate mitigation measures; and to generally inform the applicant of any Federal or State regulations applicable to the subject site. Such conference shall be for the convenience of the applicant and any recommendations shall not be binding on the applicant or the City.

SMC 20.80.100 is removed to be consistent with SMC 20.30.080, which requires preapplication meetings, and with SMC 20.30.100, which states permit application requirements.

B. **Critical Areas Checklist Required.** All applications for land use permits or approvals within the City of Shoreline shall include a completed, signed critical area checklist. The purpose of the critical areas checklist is to allow the Department to review applications to determine if critical area review is warranted or required. Applicants shall complete the critical areas checklist prior to any preapplication conference with the Department.

C. **Application Requirements.**

1. **Timing of Submittals.** A critical area report must be submitted to the City for review, if applicable. The purpose of the report is to determine the extent, characteristics and functions of any critical areas located on or in close proximity to a site where regulated activities are proposed. The report will also be used by the City to assist in the determination of the appropriate critical area rating and establishment of appropriate buffer requirements in accordance with the appropriate critical area district overlay.

2. ~~Critical Areas Report Contents.~~ ~~Reports and studies required by this chapter shall include all applicable information for each critical area as identified in submittal requirements see SMC 20.30.100.~~

D. ~~Consultant Qualifications and City Review.~~ ~~All reports and studies required of the applicant by this chapter shall be prepared by a qualified consultant acceptable to the City as that term is defined in these regulations. The City may, at its discretion and at the applicant's expense, retain a qualified consultant to review and confirm the applicant's reports, studies and plans.~~

E. ~~Permit Process.~~ ~~This chapter is not intended to create a separate critical areas permit process for development proposals. The City shall consolidate and integrate the review and processing of critical areas aspects of proposals with other land use and environmental considerations and approvals. (Ord. 238 Ch. VIII 1(J), 2000).~~

**~~20.80.110 Relationship to other regulations.~~**

A. ~~These critical area regulations shall apply as an overlay and in addition to zoning, land use and other regulations established by the City of Shoreline. In the event of any conflict between these regulations and any other regulations of the City, the regulations which provide greater protection to the environmentally critical areas shall apply.~~

B. ~~Areas characterized by particular critical areas may also be subject to other regulations established by this chapter due to the overlap or multiple functions of some critical areas. Wetlands, for example, may be defined and regulated according to the provisions for fish and wildlife habitat conservation areas contained in this chapter, as well as provisions regulating wetlands. In the event of any conflict between regulations for particular critical areas in this chapter, the regulations which provide greater protection to environmentally critical areas shall apply. (Ord. 238 Ch. VIII 1(K), 2000).~~

SMC 20.80.110 is removed to be consistent with SMC 20.30.020.

**~~20.80.120 Reasonable use provision.~~**

A. ~~The standards and requirements of these regulations are not intended, and shall not be construed or applied in a~~

SMC 20.80.120 is revised and relocated to SMC 20.30.336.

~~manner to deny all reasonable economic use of private property. If an applicant demonstrates to the satisfaction of the Hearing Examiner that strict application of these standards would deny all reasonable economic use of a property, development may be permitted subject to appropriate conditions. Applications for reasonable use exemption shall be considered a Type C application.~~

~~B. To obtain relief from the strict application of these standards, an applicant shall demonstrate all of the following:~~

~~1. No reasonable use with less impact on the critical area and the buffer is feasible or possible; and~~

~~2. There are no feasible and reasonable on-site alternatives to the activities proposed, such as possible changes in site layout, reductions in density and similar factors; and~~

~~3. The proposed activities, as conditioned, will minimize to the greatest extent possible potential impacts to the affected critical areas; and~~

~~4. All reasonable mitigation measures have been implemented or assured; and~~

~~5. The inability to derive reasonable economic use is not the result of the applicant's actions. The purchase price of the property or other investment derived expectations shall not be construed to be an applicant's action.~~

~~6. The applicant must demonstrate that the use would not cause a hazard to life, health, or property. (Ord. 238 Ch. VIII 1(L), 2000).~~

**20.80.~~130~~ 050 Notice to title.**

A. When development is permitted in an identified critical area which is comprised of a regulated critical area and its associated buffer, the area shall be placed either in a separate tract on which development is prohibited, protected by execution of an easement, dedicated to a conservation organization or land trust, or similarly preserved through a permanent protective mechanism acceptable to the City. The location and limitations associated with the critical area shall be shown on the face of the deed or plat applicable to the property and

No changes to SMC 20.80.130 and 140 (now 050 and 060) are proposed at this time.

shall be recorded with the King County Department of Records.

B. Subdivisions, development agreements, and binding site plans which include critical areas or their buffers shall establish a separate tract (a critical areas tract) as a permanent protective measure. The plat or binding site plan for the project shall clearly depict the critical areas tract, and shall include all of the subject critical area and any required buffer, as well as additional lands, as determined by the developer. Restrictions to development within the critical area tract shall be clearly noted on the plat or plan. Restrictions shall be consistent with this chapter for the entire critical area tract, including any additional areas included voluntarily by the Developer. Should the critical area tract include several types of critical areas the developer may wish to establish separate critical areas tracts. (Ord. 238 Ch. VIII 1(M), 2000).

**20.80.~~140~~ 060 Permanent field marking.**

A. All critical areas tracts, easements or dedications shall be clearly marked on the site using permanent markings, placed every 300 feet which include the following text:

> This area has been identified as a <<INSERT TYPE OF CRITICAL AREA>> by the City of Shoreline. Activities, including clearing and grading, removal of vegetation, pruning, cutting of trees or shrubs, planting of nonnative species, and other alterations may be prohibited. Please contact the City of Shoreline Department of Development (206) 546-1811 for further information.

B. It is the responsibility of the landowner to maintain and replace if necessary all permanent field markings. (Ord. 238 Ch. VIII 1(N), 2000).

~~**20.80.150 Severability.**~~

~~If any provision of these regulations or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of these regulations or the application to other persons or circumstances shall not be affected. (Ord. 238 Ch. VIII 1(O), 2000).~~

SMC 20.80.150 is repetitive of other sections and removed.

**20.80.~~160~~ 070 Alteration of critical areas.**

No changes to SMC 20.80.160 through 180 (now 070 to 090) are proposed at this time.

Alteration of critical areas, including their established buffers, may only be permitted subject to the criteria in this chapter, and compliance with any Federal and/or State permits required. (Ord. 238 Ch. VIII 2(A), 2000).

**20.80.~~170~~ 080 Alteration or development of critical areas – Standards and criteria.**

All impacts to critical areas functions and values shall be mitigated. Mitigation actions by an applicant or property owner shall occur in the following sequence:

A. Avoiding the impact altogether by not taking a certain action or parts of actions;

B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

D. Reducing or eliminating the impact over time through preservation and maintenance operations during the life of the action; and/or

E. Compensating for the impact by replacing or providing substitute resources or environments. (Ord. 238 Ch. VIII 2(B), 2000).

**20.80.~~180~~ 090 Buffer areas.**

The establishment of buffer areas shall be required for all development proposals and activities in or adjacent to critical areas. The purpose of the buffer shall be to protect the integrity, function, value and resource of the subject critical area, and/or to protect life, property and resources from risks associated with development on unstable or critical lands. Buffers shall consist of an undisturbed area of native vegetation established to achieve the purpose of the buffer. If the buffer area has previously been disturbed, it shall be revegetated pursuant to an approved planting plan. Buffers shall be protected during construction by placement of a

temporary barricade if determined necessary by the City, on-site notice for construction crews of the presence of the critical area, and implementation of appropriate erosion and sedimentation controls. Restrictive covenants or conservation easements may be required to preserve and protect buffer areas. (Ord. 238 Ch. VIII 2(C), 2000).

~~**20.80.190 Buffer width performance standards criteria.**~~
~~Required buffers shall not deny all reasonable use of subject property. Modification of the buffer width requirements and use of the performance standards contained in this chapter may be allowed by the City upon the applicant conclusively demonstrating that:~~

~~A. There are special circumstances applicable to the subject property or to the intended use such as shape, topography, location or surroundings that does not apply generally to other properties which support the granting of a variance from the buffer width requirements; and~~

~~B. Such buffer width variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other similarly situated property but which because of special circumstances is denied to the property in question; and~~

~~C. The granting of a buffer width variance will not be materially detrimental to the public welfare or injurious to the property or improvement; and~~

~~D. The granting of a buffer width variance will not significantly impact the subject critical area.~~

~~E. The mitigation performance standards of the chapter have been met or exceeded. This may include enhancement, restoration or replacement of critical areas or buffers. (Ord. 238 Ch. VIII 2(D), 2000).~~

SMC 20.80.190 is removed because it provides a process for modifying buffer standards to allow for a reasonable use, which is repetitive of other sections. The proposed section SMC 20.30.33~~6~~ (see page 16) provides criteria for reasonable uses and individual critical area sections have rules for modifying buffers.

**20.80.~~200~~ 100 Classification and rating of critical areas.**
To promote consistent application of the standards and requirements of this chapter, critical areas within the City of Shoreline shall be rated or classified according to their characteristics, function and value, and/or their sensitivity to disturbance. Classification of critical areas shall be determined by the City using the following tools:

A. Application of the criteria contained in these regulations;

No changes to SMC 20.80.200 (now 100) are proposed at this time.

B. Consideration of the technical reports submitted by qualified consultants in connection with applications subject to these regulations; and

C. Review of maps adopted pursuant to this chapter. (Ord. 238 Ch. VIII 2(E), 2000).

***From here forward (for the remaining subchapters), there are few revisions proposed at this time. Therefore, only those sections for which revisions are proposed are shown..***

## Subchapter ~~3~~2. Geologic Hazardous Areas

**20.80.240 Alteration.**

A. The City shall approve, condition or deny proposals in a geologic hazard area as appropriate based upon the effective mitigation of risks posed to property, health and safety. The objective of mitigation measures shall be to render a site containing a ~~critical~~ geologic hazard as safe as one not containing such hazard. Conditions may include limitations of proposed uses, modification of density, alteration of site layout and other appropriate changes to the proposal. Where potential impacts cannot be effectively mitigated, or where the risk to public health, safety and welfare, public or private property, or important natural resources is significant notwithstanding mitigation, the proposal shall be denied.

B. **Class IV Landslide Hazard Areas.** Development shall be prohibited in Class IV (very high) landslide hazards areas. except as ~~for the installation and construction of streets and/or utilities, that have been~~ granted by a critical areas special use permit or a critical areas reasonable use permit.~~, consistent with the following criteria:~~

~~1. The proposed street and/or utility is identified in an adopted plan effective as of the date of adoption, such as the Comprehensive Plan, Capital Facility Plan, Capital Improvement Plan, Transportation Improvement Plan or other Utility Facility Plan. As new or amended plans are prepared and adopted, streets and utilities shall be located to avoid impact to Class IV landslide hazard areas. Where no reasonable alternative exists to locating the subject~~

Exceptions to any of the standards would need to comply with the reasonable use or special use criteria listed in the proposed revisions SMC 20.30.333 and .336. Providing additional criteria here creates confusion, causing one to ask, which criteria apply?

~~street or utility in a Class IV landslide hazard areas, review and approval of the plan shall include a discussion of other alternatives considered and the rationale for establishing streets and utilities in the subject Class IV landslide hazard areas.~~

~~2. Alternative locations, which avoid impact to Class IV landslide hazard areas have been evaluated and are determined to be economically or functionally infeasible.~~

~~3. A geotechnical evaluation to identify the risks of damage from the proposal, both on-site and off-site has been conducted, to ensure that the proposal will not increase the risk of occurrence of the potential geologic hazard; and to identify measures to eliminate or reduce preexisting risks.~~

~~4. When no alternative exists, the impact shall be minimized by limiting the magnitude of the proposed construction to the greatest extent possible. Any impacts shall be rectified by repairing, rehabilitating, restoring, replacing or providing substitute resources consistent with the mitigation and performance standards contained in this subchapter.~~

C. **Type II, III, IV Landslide Hazards.** Alterations proposed to Type II, III, and IV Landslide Hazards shall be evaluated by a qualified ~~consultant~~professional through the preparation of the geotechnical report. However, for proposals that include no development, construction, or impervious surfaces, the City, in its sole discretion, may waive the requirement for a geotechnical report. The recommendations contained within the geotechnical report shall be incorporated into the alteration of the landslide hazard area.

D. **Critical Seismic Hazard Areas.**

1. For one-story and two-story residential structures, a qualified ~~consultant~~professional shall conduct an evaluation of site response and liquefaction potential based on the performance of similar structures with similar foundation conditions; or

2. For all other proposals, the applicant shall conduct an evaluation of site response and liquefaction potential

including sufficient subsurface exploration to determine the site coefficient for use in the static lateral force procedure described in the Uniform Building Code.

E. Erosion Hazard Areas.

1. Up to 1,500 square feet may be cleared on any lot in an erosion hazard area without a permit, unless the site also contains another type of critical area or any other threshold contained in SMC 20.50.320 would be exceeded.

2. All development proposals on sites containing erosion hazard areas shall include a temporary erosion and sediment control plan consistent with the requirements of the adopted surface water design manual and a revegetation plan to ensure permanent stabilization of the site. Specific requirements for revegetation plans shall be determined on a case-by-case basis during permit review and administrative guidelines shall be developed by the Department. Critical area revegetation plans may be combined with required landscape, tree retention, and/or other critical area mitigation plans as appropriate.

3. All subdivisions, short subdivisions or binding site plans on sites with erosion hazard areas shall comply with the following additional requirements:

   a. Except as provided in this section, existing vegetation shall be retained on all lots until building permits are approved for development on individual lots;

   b. If any vegetation on the lots is damaged or removed during construction of the subdivision infrastructure, the applicant shall be required to implement the revegetation plan in those areas that have been impacted prior to final inspection of the site development permit or the issuance of any building permit for the subject property;

   c. Clearing of vegetation on individual lots may be allowed prior to building permit approval if the City of Shoreline determines that:

i. Such clearing is a necessary part of a large scale grading plan,

ii. It is not feasible to perform such grading on an individual lot basis, and

iii. Drainage from the graded area will meet water quality standards to be established by administrative rules.

4. Where the City of Shoreline determines that erosion from a development site poses a significant risk of damage to downstream receiving water, the applicant shall be required to provide regular monitoring of surface water discharge from the site. If the project does not meet water quality standards established by law or administrative rules, the City may suspend further development work on the site until such standards are met.

5. The City may require additional mitigation measures in erosion hazard areas, including, but not limited to, the restriction of major soil disturbing activities associated with site development between October 15th and April 15th to meet the stated purpose contained in SMC 20.80.010 and SMC 20.80.210.

6. The use of hazardous substances, pesticides and fertilizers in erosion hazard areas may be prohibited by the City of Shoreline.

F. When development is permitted in geologic hazard areas by these regulations, an applicant and/or its qualified ~~consultant~~professional shall provide assurances which include the following:

1. A report from the geotechnical engineer and/or geologist who prepared the studies required by these regulations that the risk of damage from the proposal, both on-site and off-site, are minimal subject to the conditions set forth in the report, that the proposal will not increase the risk of occurrence of the potential geologic hazard, and that measures to eliminate or reduce risks have been incorporated into the report's recommendations; and

2. A legal statement which shall be recorded and noted on the face of the deed or plat, executed in a form satisfactory to the City, that characterizes the site as being located within a geologic hazard area, and states that there may or may not be risks associated with the development of the site. In addition the provisions for permanent field marking (SMC 20.80.140) may apply; and

3. Posting of a bond; guarantee or other assurance device approved by the City to cover the cost of monitoring, maintenance and any necessary corrective actions. (Ord. 299 1, 2002; Ord. 238 Ch. VIII 3(D), 2000).

## Subchapter 43. Fish and Wildlife Habitat Conservation Areas

**20.80.290 Alteration.**

A. Alterations of fish and wildlife habitat conservation areas shall be avoided~~, subject to the reasonable use provision section (SMC 20.80.120) or special use permit section (SMC 20.80.090)~~.

B. Any ~~proposed~~ alterations permitted~~, consistent with special use or reasonable use review,~~ to fish and wildlife habitat conservation areas in accordance with SMC 20.30.333 or 20.30.336 ~~shall~~ require the preparation of a habitat management plan, consistent with the requirements of the Washington State Department of Fish and Wildlife Priority Habitat Program. The habitat management plan shall be prepared by a qualified ~~consultant~~ professional and reviewed and approved by the City. (Ord. 238 Ch. VIII 4(D), 2000).

## Subchapter 54. Wetlands

**20.80.340 Alteration.**

A. Type I Wetlands. Alterations of Type I wetlands shall be prohibited subject to the critical areas reasonable use ~~provisions~~ permit and the critical areas special use permit provisions of this Title~~chapter~~.

B. Type II, III and IV Wetlands.

1. Any proposed alteration and mitigation shall comply with the mitigation performance standards and requirements of these regulations; and

2. No net loss of wetland function and value may occur; and
3. Where enhancement or replacement is proposed, ratios shall comply with the requirements of this subchapter. (Ord. 238 Ch. VIII 5(D), 2000).

# Attachment B

PLANNING COMMISSION MINUTES (3/6, 3/20, 4/3, AND 4/17)

These Minutes Approved
March 20, 2003

# CITY OF SHORELINE

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

March 6, 2003 | Shoreline Conference Center
7:00 P.M. | Board Room

**PRESENT**
Chair Doennebrink
Vice Chair Harris
Commissioner Doering
Commissioner Sands
Commissioner MacCully
Commissioner Piro
Commissioner McClelland

**STAFF PRESENT**
Tim Stewart, Director, Planning & Development Services
Anna Kolousek, Assistant Director
Rachael Markle-Oleson, Senior Planner, Planning & Development Services
Ian Sievers, City Attorney
Lanie Curry, Planning Commission Clerk

**ABSENT**
Commissioner Gabbert
Commissioner Kuboi

### 1. CALL TO ORDER

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

### 2. ROLL CALL

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

### 3. APPROVAL OF AGENDA

The Commission agreed to strike Item 4 (Approval of Minutes) from the agenda. They also agreed to replace Item 8 (Public Comment) with Items 5 (Public Comment) and 6 (Reports of Commissioners).

## 4. STAFF REPORT

### a. Announcements

Mr. Stewart thanked the Commission for attending the City Council Meeting last Monday night. At that meeting, the City Council voted to refer the stream inventory to the Commission. This has been scheduled on the March 20, 2003 agenda. The City Council requested that the Commission review the inventory and accept scientific comments that might be available. The inventory is available on compact disk.

### b. Legislative Public Hearing on Proposed Amendments to the Critical Areas Procedures

Mr. Stewart explained that the City is mandated by the State to review their Critical Areas Ordinance by the end of 2004. In addition, the staff believes it is important to keep the regulations current and valid. This is an opportunity for the Commission to review any possible procedural changes to the ordinance. Once the procedural amendments have been made, the Commission will consider possible changes to the substance of the Critical Areas Ordinance.

Mr. Stewart said the proposal before the Commission at this time is a de novo proposal. It is new and stands by itself, even though there is a series of other events and actions that are swirling around the Critical Areas Ordinance including various court cases, the stream inventory, amendments proposed last summer and the future debate and discussion on the policies that will be part of the Comprehensive Plan update.

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

Anna Kolousek, Project Manager, introduced the City's consultant for the project, Paul Inghram who is the senior planner with Berryman and Henigar. She said Mr. Inghram has been working with the Washington State Office of Community Development to prepare model critical areas regulations and a critical areas guidebook, which will be published later this year. He is going to work with the City to prepare the actual regulations for the critical areas.

Ms. Kolousek said staff is proposing that the Commission use the same type of approach to update the critical areas regulations that was endorsed for the development code preparation. This approach separates the procedural issues from the substantive issues because they are largely technical and deal with administrative, quasi-judicial and legislative review and appeal issues. She said this approach also allows for a more manageable review and adoption process.

Ms. Kolousek noted that it was not practical to write all the procedures in one chapter of the development code the first time around. The critical areas chapter included procedures because they were written in the second phase of the code preparation. However, the working model for the development code groups the procedures into one chapter and the related development standards into another. This allows the users to find information more quickly and follow the procedural sequences with less difficulty.

She said staff recommends that they "weed out" the procedures that have been included in the critical areas chapter and group them together in the procedural chapter where they belong. All other revisions that will address the substance of the protection standards for the critical areas will be brought for review in the next round after the "best available science" has been established. She encouraged the Commissioners to concentrate their efforts on the procedural issues at this time to improve the organization, consistency and readability of the code.

Ms. Kolousek said the City's current development code includes nine chapters. The procedural changes would affect only procedures for critical areas, some duplication of administrative functions and minor revisions aimed to improve clarity and consistency. She said that out of the titles listed on Page 2 of the staff report, procedural or organizational changes are being proposed only to Sections 20.10, 20.20, 20.30 and 20.80. The staff report provides summaries of intent for each of the proposed revisions, as well as an explanation of why the change is being proposed.

Ms. Kolousek said that they are not proposing to change any of the critical area definitions. They are only proposing minor clarification to terms that are generally applicable to all development standards. Staff is proposing to move the existing critical areas regulations related to the process, authority and application requirements (Chapter 20.80), to the procedures section (Chapter 20.30). She noted that while critical area permits are listed on the table in Chapter 20.30, the decision criteria is located in Chapter 20.80. She explained that the critical areas procedures, which are partially listed in Chapter 20.30 and partially listed in Chapter 20.80, are duplicative, and this redundancy creates confusion and inconsistent results.

Ms. Kolousek said the major change the Commission will consider at this time is moving the critical areas special use and reasonable use permit criteria sections to the general procedure provisions and then revise some of the permit criteria so that the permits are more precisely targeted towards actions intended to be permissible. From experience with past permits, she explained that there is an understanding that the current criteria are too vague.

Ms. Kolousek said the reasonable use permit is a constitutional "safety valve" and staff is proposing that this criteria be revised to be more consistent with State law. Staff is also proposing that the term "reasonable use" be more clearly defined so that it can serve as the basis for the administrative decision. Because this issue will likely be discussed during the hearing, she urged the Commission to note that Type B Actions are based on clearly established criteria, and this leads to an administrative action that can be appealed to the Hearing Examiner.

Next, Ms. Kolousek referred to the issue of special districts. Staff is proposing that the special districts chapter be renamed to "Critical Areas," which would become a freestanding chapter. Currently, the critical area regulations are a subset of the special districts chapter, which was established with the intent that it would contain various subchapters, each corresponding to a sub-area within the City.

Ms. Kolousek said that following the move of the permit criteria and the administrative provisions to the procedural chapter and the renaming of the special districts chapter, the Critical Areas Chapter, itself, would then be organized the way it is presented on Page 3 of the staff report.

She emphasized that this is strictly an organizational change to the chapter, with no changes proposed to the protective standards. These would be reviewed at a later date.

Lastly, Ms. Kolousek said staff is proposing some minor revisions to improve clarity and consistency, to use up-to-date terminology, to improve the organization and simplify the code. Staff has removed the vague language in some instances. She referred to the proposed changes to Chapter 20.80, which make it very clear that the City will require a pre-application meeting for proposals located within the critical area buffers as well as the critical areas. The proposed changes also remove the exclusion of the buffer width, meaning that the variance shall not relieve the applicant from compliance with the critical area standards, including the buffer width.

Ms. Kolousek emphasized that because the proposed changes are procedural only, they are categorically exempt from the SEPA threshold determination and EIS requirements.

**Bob Vreeland**, 3241 NE 105th Street, Seattle, said the proposed amendments to the critical areas procedures do nothing to better integrate the critical areas into the City's development regulations. Nor do they improve the consistency or readability and simplify the code. He said that, in his opinion, the proposed amendments diminish the protective standards for critical areas, geologically hazardous areas, fish and wildlife habitat conservation areas and wetlands. As an example, he said there are major changes proposed to the reasonable use permit (Chapter 20.30.350) which reduce the protection standards.

Mr. Vreeland said that, as proposed, the term "reasonable use" would be defined as "a single-family residence or other permitted building with a footprint no greater than 800 square feet or other primary permitted structures, including paved areas, with a horizontal area no greater than 800 square feet plus any accessory structures and services." He said the proposed amendment would allow this "reasonable use" in critical areas, geological hazardous areas, fish and wildlife habitat conservation areas and wetlands. In addition, the proposed changes would allow the Planning Director to reduce setbacks and parking requirements by up to 50 percent and eliminate landscape requirements—all without the application of best available science.

Mr. Vreeland said that at a minimum, the Planning Commission must allow more time for public review and comment on the proposed amendments.

**Pat Crawford**, Twin Ponds Fish Friends, 2326 North 155th Street, said she just got back from spending another afternoon in Superior Court regarding issues related to the proposed amendments. Again, the City was on the losing side. She read from the old City Resident Owner's Manual regarding the purpose of a permit, and noted that much of this section was taken out of the new manual. If the City keeps making these changes, nobody will have any legal protections left. The City has a good code now, they just don't have anyone to enforce it.

Ms. Crawford explained that SEPA was designed to ensure that environmental values are considered during land use actions, that adequate and timely environmental information is gathered and provided to decision makers, and that public involvement is included in the decision process.

She emphasized that she believes the proposed procedural changes would have a direct affect on the projects that are now in court. Therefore, the changes go way beyond procedural.

Ms. Crawford submitted two letters that were identified as Exhibits 2a and 2b. Ms. Crawford pointed out that staff is proposing to remove the language which states that in the event there are conflicting regulations, the regulations that provide the most protection for the critical areas would prevail. Twin Ponds Fish Friends recommends the City reevaluate their stream buffers to be consistent with the recommendations from the Department of Fish and Wildlife.

Ms. Crawford said Twin Ponds Fish Friends hired a consultant, Madrona Services from Port Townsend, to review the proposed procedural amendments. While the City keeps saying that the current multi-layered approach is repetitive and needs to be simplified, she suggested that the City is trying to get away with allowing smaller stream buffers by calling themselves urbanized because they have a multi-layered approach. This approach allows for implementation of best available science specific to the site and development being proposed.

Ms. Crawford said the letter from their consultant points out that the primary emphasis of the draft chapter relating to wetland and stream protection states that "when priority, threatened or endangered species are not present, you would protect the functions and values of these systems." The City of Shoreline has fish in their streams. Therefore, their primary emphasis should be habitat and buffer protection.

Ms. Crawford said she believes the proposed changes would have a significant impact. Therefore, a SEPA review should be done. Rather than creating their own "best available science," she suggested that staff go on line to find out what the City would have to comply with rather than spending tax money to create something that might not pan out when taken before the Growth Management Board.

Tim Crawford, Twin Ponds Fish Friends, 2326 North 155th Street, said he believes that a SEPA process for the proposed changes is necessary, since this would allow the public and other government agencies to comment on the impacts associated with the changes. He referred to WAC 197-11-80, which states, "Procedural actions are categorically exempt from threshold determination." He clarified that procedures with direct environmental impacts are not exempt. Actions that cause environmental harm are subject to review. Major changes demand a SEPA review, and he said he believes the proposed changes are significant and not just procedural.

Mr. Crawford referred to Chapter 20.10.20 and said the staff is proposing that the words "State and Nation" be replaced with "Public." He said this change would compromise the global importance of the natural amenities. The streams are actually waters that are owned by the State. Endangered and threatened species that are found in these streams are federally protected. The code should reflect the City's responsibility to the rest of the world.

Mr. Crawford said the term "functions and values" is a verbiage that is being added throughout the code and used by the City. He said he believes this could be used to degrade the stream and should not be considered the "best available science."

He pointed out that functions and values are supposed to be the primary emphasis only when fish are not present. However, even Aegis' own biologist indicated that they found fish present on site.

Mr. Crawford referred to the proposed amendment to Chapter 20.30.410, which would change the Type A Permit (clearing and grading) to a Type B Permit. He said he does not feel this change would be appropriate. Without the opportunity for public review of these permits, the City could end up with the same type of situation they had with the Aegis property. People would be able to clear right to the water's edge without any public review. This should require a SEPA process.

Mr. Crawford urged the Commission to review the documents that were provided by Twin Ponds Fish Friends before making a recommendation to the City Council. The changes are more than just procedural.

**Elaine Phelps**, 17238 – 10th Ave NW, said she does not agree with the proposal to have the Hearing Examiner hear appeals related to critical areas instead of the City Council. She referred to Section 20.30.340 (Critical Areas Special Use Permit) and said she is concerned about the use of the word "public." When the City granted the special use permit to Aegis, they stated that Aegis was providing a public service. She said she would like to see a more rigid and precise definition of the term "public."

Ms. Phelps said she does not believe the City provided adequate time for the average citizen to read, understand and explore the consequences of the proposed amendments. She requested that the public comment period be extended so that the public can participate in a fully informed way. Ms. Phelps said that well thought out procedures are at the heart of a successful democratic government. This cannot be achieved without more than just a show of citizens.

Ms. Phelps said that parceling out the various aspects of the critical areas code among different sections of the code is counterproductive to clarifying how critical areas are to be managed. She urged the Commission not to endorse the proposed changes. She submitted her letter, which was identified as Exhibit 3.

**Ginger Botham**, 15334 Linden Ave North, said it appears that the changes being considered by the Commission are not limited to procedure. Changing a permit from a Type C to a Type B would eliminate the public hearing. Moving from a Type B to a Type A Permit would eliminate the public from the process completely. The City should be reviewing past lawsuits and considering changes in their code to eliminate these situations in the future. She said anytime the City considers a variance the public should be involved in the review process. She referred to the list of criteria that must be met in order to obtain a variance. She suggested that an applicant be required to meet every criteria on the list.

Ms. Botham said she feels that SEPA review is essential. SEPA exists for a purpose, and they should not skip this step.

**Dennis Casper**, 10545 Greenwood Ave N, Seattle, referred to Section 20.30.110.A.2 (Page 10), and said it seems like some formula could be structured so that the applicant would not have to pay twice. He suggested that perhaps the City should provide an approved list of professionals that applicants could choose from. If the applicant chooses someone from the list, they could be assured that they would only have to pay once.

Next, Mr. Casper referred to Section 20.30.350.C.2, and suggested that this be based on the specific application involved. He said the limit should be consistent with the parameters of the application rather than a standard number. Lastly, Mr. Casper referred to 20.80.190, which addresses the modification of buffers. The note in the box on the side of the page indicates that this section was moved to Page 16, but he cannot find it there.

**Janet Way**, Thornton Creek Legal Defense Fund, 940 North 147th Street, said she feels sorry for the Commission in this case because the packet of information that was provided for them to review was huge. While she is familiar with environmental issues, she said she found all of the proposed changes very confusing. She said she finds it misleading for the staff to present the changes as housekeeping and procedural only. Ms. Way asked that the Commission grant an extension of the public hearing to allow the public further time to review the documents and prepare their constructive comments. She said there are a lot of citizens who would have liked to know that this issue was going to be discussed, but the notices sent out by the City were inadequate.

Ms. Way said that the stream inventory is a huge issue and the Commission should not decide upon any of the proposed changes until they have addressed the stream inventory. At this time, Shoreline does not have a representative on the Thornton Creek Watershed Management Committee, and this needs to be addressed.

Ms. Way said there is a need for SEPA review on the proposed amendments prior to the Commission making a recommendation because the impacts are significant. Also, she said there does not seem to be any scientific backing included in the packet to support the proposed changes. In addition, the proposed amendments would conflict with the Growth Management Act. She urged that no decisions be made until the outstanding issues are resolved.

Ms. Way referred to the letter she submitted (Exhibit 5) outlining her concerns regarding the proposed amendments. They include reasonable use and special use, public notice and oversight by public, appeals, critical areas overlay districts, boundary line changes, drainage, streams, wetlands, steep slopes, habitat, buffers, utilities and grading and clearing. She concluded that the proposal is way too confusing for reasonable people to understand and provide comments on. She suggested that the City hold a series of workshops or appoint a subcommittee to work with citizens in workshops so the public can have their questions answered. Finally, she urged the Commission to delay their recommendation and extend the public comment period.

**Mark Smith**, 1414 NW 186th Street, said he has seen a critical area in his neighborhood razed to the ground, and that is why he very interested in the amendments right now, as are his neighbors. It seems like the proposed amendments are an attempt by the City to water down the provisions.

Because he has not had sufficient time to review the documents thoroughly, he asked that the Commission grant an extension of the public comment period so that the public can gain a better understanding of the issues and provide informed comments. He said that during his cursory review of the document, he found the changes to be much more than procedural.

**Walt Hagen**, 711 North 193rd Street, said that he participated in the Planning Academy throughout the process of creating the Development Code. He said the Planning Academy participants felt that they had a pretty good understanding of the Code. But before it went to the City Council for approval, the Planning Director decided to rewrite it to make it easier for people to use. Now staff is trying to do the same thing with the critical areas ordinance. He questioned why the entire document was not provided to the citizens so that they could have a clear understanding of all of the changes that were being proposed. He suggested that staff provide a marked up copy of the total document so that they can see the context of the changes. He also suggested that the public be given more time to review the information. He concluded by stating that, based on past staff performance, he believes there is a lack of sincerity.

**Lawrence Yaffe**, 2629 NW 204th Street, said that while he can perhaps understand the staff's motivation for attempting to define reasonable use, he cannot imagine the proposed definition being applied to every possible lot. He did not see how the proposed definition could be legislated. Next, he referred to Section 20.80.050.D (Page 24), which staff is proposing to eliminate in its entirety. Removing this section as an administrative change with the assertion that it would prevent inconsistency is misleading and outrages him. This is obviously a substantive change.

Mr. Yaffe concluded his comments by agreeing with the previous speakers that the public needs to be able to review the total document and provide their comments. He urged the Commission to realize that the changes are more than procedural.

Ms. Kolousek explained that State law categorically exempts procedural changes to any codes, ordinances, or other types of resolutions from the requirement of threshold determinations. Procedural changes are also categorically exempt from all EIS requirements.

Commissioner Sands inquired how staff determines if changes are procedural or substantive. Ms. Kolousek answered that staff believes the proposed changes are procedural and related to the requirements or steps the applicants must follow in order for their applications to be reviewed. Administrative procedures require that certain criteria be specifically defined so that action can be rendered administratively as Type B Actions. The staff believes they have provided criteria for all Type B Actions to enable the director to make administrative action based on the objective criteria. If the procedural criteria cannot be clear and completely objective, then the code calls out procedures for quasi-judicial actions. Quasi-judicial actions require a public hearing.

Ms. Kolousek said that the critical area reasonable use permit was previously a Type C quasi-judicial action. As a result of discussing the issue with a variety of experts, looking at what is happening in the field, and receiving advice from the City's legal counselors, staff attempted to define "reasonable use" criteria based on certain thresholds which have already been established in another section of the code (the cottage housing ordinance). Nobody has appealed this threshold, thus far, as being unreasonable for single-family living.

Ian Sievers, City Attorney, explained that using the same procedure that was used for the Development Code review, the task of reviewing the critical areas ordinance was divided into phases: procedural and substantive elements. He attempted to clarify the issue of procedural verses substantive issues and whether or not a SEPA review would be required. He clarified that there is a categorical exemption for procedural regulations. He said that while an amendment may be procedural as far as SEPA, that does not necessarily mean it is not important or substantive. Nonetheless, these are still considered procedural rather than substantive, and no SEPA review is required. The amendments do not decide what needs to be regulated or how to regulate, but they simply change the decision maker or the process of making decisions. He said staff would take the public comments regarding threshold criteria under advisement, but neither this decision nor the SEPA process has to be completed before Planning Commission can make a recommendation. However, it does need to be completed before the City Council can take final action.

Chair Doennebrink asked that the Commission discuss the request voiced by the citizens that they be given more time to review the documents and provide comments to the Commission prior to them making a recommendation to the City Council.

Commissioner McClelland said she did not feel that a workshop would be the appropriate method for dealing with the amendments. However, she said she is still not convinced that the Commission is not being asked to make substantive changes. She is extremely concerned about the proposed amendments. The implications are dramatic, and it is an affront to the public to try to pass something off as procedural that perceptually feels substantive.

Vice Chair Harris pointed out that the City has hired trained professional consultants to help with this work, as well as a legal attorney. Their job is to advise the Commission and the City Council, and he does not like the idea of approaching every issue as if there were some undercurrent of distrust between the Commission, Council and staff. While he does not like all of the staff's decisions, he believes they are well qualified and he tends to give a lot of credence to their advice and recommendations.

Commissioner Doering said that while staff has decided to take a more liberal approach, she would like to consider a more conservative approach. However, she felt they could work out the issues. She said she appreciates the comments provided by the public, and felt the Commission should begin their deliberations on the issue as soon as possible.

Commissioner Piro asked for guidance from the staff regarding the timing of the proposed amendment review process. He particularly asked staff to provide feedback regarding the impacts of extending the public comment period.

Mr. Stewart said staff does not have a concern about extending the public comment period. It is important to get all of the public comments before the Commission and City Council. He said that allowing additional public comment would be beneficial to clarify some of the issues.
A number of the comments heard this evening eluded to changes in the ordinance that are not actually being proposed. An extension would provide an additional opportunity for the staff to educate the public about what the actual amendments are. He suggested that the Commission could recess the public hearing at this time and begin their deliberations. They could then reopen the public hearing on March 20, 2003.

The Commission discussed whether or not it would be possible for the public to obtain a copy of the entire document. Ms. Kolousek answered that the staff does not renumber the code. They forward the changes to a Code Publishing company, and they renumber the chapters. If the Commission feels it is necessary at this time, staff could produce a renumbered document. The Commission indicated that they did not feel it necessary to provide a renumbered code at this point. Mr. Stewart pointed out that every addition and deletion that is being proposed is identified in Attachment 1. The underlined words identify the additions and the words that are lined out will be deleted. No other changes are being proposed. The Commission agreed that they would have to review each of the changes in context of the entire code. It was noted that staff provided citations for each of the.

Commissioner MacCully said he is not prepared to act on the proposed amendments now. He needs time to absorb the public response and review the documents further. He suggested that staff provide some type of timetable for this process, especially in light of all of the items on the Commission's 2003 workload.

Commissioner MacCully said he does not clearly understand the significance of changing Type C Actions to Type B Actions. He asked that staff provide an example of how this change would impact a particular action. He said he considers the removal of the public process from a procedure to be significant.

Commissioner Piro asked what the timeframe for the amendments would have been if they had done it as a SEPA review. Ms. Kolousek answered that it would all depend upon the threshold determination. If the amendments were considered substantive instead of administrative, they would have been identified as non-project actions, and SEPA determination would follow. If a determination of non-significance were issued for the amendments, the time period would be two weeks for public comments. Mr. Stewart added that when the procedural chapter of the Development Code was adopted in 2000, it was determined to be exempt and no SEPA review was done. Commissioner Piro suggested that if the full agenda on March 20 does not allow the Commission to complete their discussion and make a recommendation, they might consider holding a special meeting.

Commissioner MacCully inquired if the second phase of the critical areas ordinance review would require a SEPA review. Mr. Stewart answered affirmatively. Commissioner MacCully clarified that the reason for dividing the review into two phases is to allow the Commission to deal with the half that is less contentious first. Then they could move forward with the more controversial issues that require a SEPA review.

COMMISSIONER PIRO MOVED THAT THE COMMISSION ACCEPT THAT STAFF HAS MADE A GOOD FAITH EFFORT TO MAKE A DETERMINATION ON HOW TO PROCEED WITH THE CRITICAL AREAS ORDINANCE REVIEW AND THAT THE COMMISSION CONSIDER AN EXTENSION OF THE PUBLIC HEARING FOR TWO WEEKS. COMMISSIONER MACCULLY SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

The Commission agreed that they should identify the issues that need significantly more discussion amongst the Commission. Commissioner Piro encouraged the staff to develop a matrix to identify the issues that received a lot of public comment. Mr. Stewart said that two or three issues seem to have attracted a lot of public attention. One is the 800-square foot limit for reasonable use. He said staff could explain the problems that currently exist and why they are recommending the change. The second issue that was brought up repeatedly by the public is related to the impacts of changing Type C Actions to Type B Actions. Staff can identify the rationale for proposing each of the amendments. He suggested that the Commission begin their deliberations by discussing these two issues. The Commission agreed and asked that staff also provide more information regarding "best available science" and the waiver of setback requirements.

Commissioner Sands inquired how staff could make sure that everything is legal and drafted as it is supposed to be once the changes have all been made. Mr. Sievers said it is important to track the changes. But ultimately, this is a legal issue and the City's legal department would be responsible to make sure the changes are documented properly.

Commissioner McClelland commented that the Commission is being asked to make changes to a very imperfectly written document. While the content may be good, it is hard to understand and makes her feel uneasy. It is important to use the same words with the same meaning throughout the entire document. She suggested that additional editing must be done to make the statements more clear. Mr. Stewart encouraged the Planning Commission to submit their editing changes (only those related to the language being proposed for change) so that staff can consider including them in the next draft. However, he cautioned that there are some sections that are mandated by State law.

Commissioner McClelland said she understands that procedural changes are categorically exempt from SEPA. But after reading the entire document, including the changes, the amendments appear to be very "developer friendly." Perhaps that is why the public has the feeling that substantive, as well as procedural, changes are being recommended. The proposed amendments come across as being very liberal.

Mr. Sievers explained that the proposed amendments would actually make the critical areas ordinance tighter and more environmental protective in a couple of areas. One is related to the critical areas special use permit. There was some criticism that this should only be allowed for public agencies and utilities, and not private entities, and this was addressed in the proposed amendments. In addition, while it is possible to obtain a variance for a buffer at this time, it would no longer be allowed for critical areas buffers. The only way to obtain this use is through the reasonable use permit process.

Commissioner McClelland said it appears as though the City has done everything they can to allow someone to get a reasonable use out of a piece of property that has critical areas on it. Mr. Sievers answered that according to constitutional law, no property can be deprived of reasonable use. Mr. Stewart added that if the City were to deny all reasonable use of a property, it would be considered a "taking."

Commissioner McClelland said she understands the constitutional law, but she still feels the document seems to make it easier instead of harder for people to build in or near critical areas. Ms. Kolousek referred to Section 20.80.190 (Page 35) and said the current code allows all kinds of exemptions for buffer widths. These have been eliminated and massed into a variance process. The current language creates incredible uncertainty on the part of developers and citizens because the staff was placed in the situation of having to grant exemptions based on the criteria. The proposed amendments would eliminate the need for the staff to make a judgment and take a side. The intent is to eliminate the ability of developers to get around the requirements. The new language is much more straightforward and easier to apply.

Commissioner Piro noted that this is a sensitive issue and will be the core of all the environmental issues they consider in the Comprehensive Planning exercise. Even if they don't have to go through the SEPA review for all of the amendments, they could use SEPA as a tool to help them review all of the issues and concerns.

Vice Chair Harris cautioned the Commission against making requests of the staff that would end up bogging them down with work. They have other work to do, as well. He said that as he read through the proposed amendments, he found them to be neutral and merely a transfer of regulations from one section to another. However, he said Commissioner Gabbert has indicated that he feels that at least a few of the proposed amendments would end up tightening the regulations. Vice Chair Harris said he feels the staff has done a good job in preparing the amendments, and now it is up to the Commission to make a decision.

Commissioner Doering agreed with Vice Chair Harris that it is the Commission's responsibility to review the proposed amendments the staff has provided and either tighten or loosen them as they feel appropriate based on the comments from the public and the information that is available for their review.

## 5. PUBLIC COMMENT

**Patty Crawford,** 2326 North 155th Street, noted that staff is proposing the elimination of Section 20.30.350.B.5 (Page 15) in its entirety. She cautioned that their recent court victory was based on this provision. There was an illegal boundary line change with a new lot created. There needs to be more public process, and it needs to be accepted earlier. Public comment was denied with the Gaston Project. Shoreline is a staff driven city. Therefore, they need a citizen's panel to act as the "in between" for the citizens and the staff because the staff is not responding to the public.

**Virginia Botham**, 16334 Linden Ave North, said that there was no solution to the boundary line adjustment proposal. The proposal to change Type B Actions to Type A Actions does nothing to encourage public notice. It feels like the proposal is written backwards. They need to look at what is being changed and why and then determine the impacts.

**Tim Crawford**, 2326 North 155th Street, said he is so tired of the staff making conclusionary statements that the public is just supposed to accept. Their group spent $103,000 of their own money last year for legal fees to battle the City on environmental issues. He concluded that the City uses a lot of tax revenue to fight the legal battles at the advice of the City Attorney. At some point they need to stop doing this.

**Bob Vreeland**, 3241 NE 105th Street, Seattle, said that his understanding is that public utilities are taken care of under the exemptions in Section 20.80.030. If that is the case, there is no need for a critical areas use permit. He pointed out that the proposed amendments include the term "utility." The definition of a utility is "Private or municipal corporations owning or operating or proposing to own or operate facilities that comprise a system or systems of public service." He felt this definition would provide a loophole for corporations such as Aegis to qualify as a utility.

**Elaine Phelps**, 17238 – 10th NW, thanked the Commission for allowing an additional two weeks for the public to provide their comments. However, she encouraged the City to provide some type of notice to the general public so that the entire community has access to the information.

Ms. Kolousek reviewed the types of notification that were provided to the public related to the hearing. She said she did receive several phone calls from citizens, and information was sent to these individuals.

**Anthony Poland**, 2433 NW 198th Street, agreed with all of the previous public speakers. He said if he were in Chair Doennebrink's position, he would not allow a document like the one being proposed to be approved on his watch. Anyone who reads the document can see that the proposed changes are substantive.

**Janet Way**, 940 NE 147th Street, said she has the same feelings about the proposed amendments as those expressed by Commissioner McClelland. She suggested that the changes are being proposed within the context of the legal cases that have been to court recently. The consequences of the changes, particularly those related to the public notice and oversight opportunity, are a great concern to her. Since she lives near a critical area, she wants to have a clear understanding of what opportunities she will have, as a citizen, to influence the outcome of a review process.

**Lawrence Yaffi**, 2629 NW 204th Street, said that details matter, and he encouraged the Commissioners to look carefully at each word that is being proposed for change. As an example, he referred to Section 20.30.350.E (Page 16), which provides a list of priorities that would be considered by staff when reviewing exceptions to critical areas standards. However, there is no indication as to whether the list is done based on highest priority or lowest priority.

Mr. Yaffi said he only learned about the meeting the day before. He visited the City's web page to find out more information about where and when the Commission would be meeting. It would have been helpful if the Commission's agenda, as well as the document outlining the proposed amendments, were posted on the web page, as well.

**Mark Smith**, 1414 NW 186th Street, thanked the Commission for extending the public comment period. He said he also visited the web site about two days ago when he learned of the meeting. He clicked on the link for the applicable code section, but it was not available. He said it would take time for the Commission to understand the changes and their positive or negative impacts. Some of the language is being totally deleted and replaced by simplified verbiage. He said these kinds of sweeping changes give the impression that there is substance being lost.

## 6. REPORTS OF COMMISSIONERS

Commissioner Piro expressed his opinion that shuffling the agenda for the meeting worked very well. He suggested that it should serve as a model for subsequent meetings where public hearings are scheduled on the agenda. Chair Doennebrink noted that suggestions regarding changes to the Commission's agenda format and bylaws will be coming before the Commission at a future meeting.

Vice Chair Harris said he stayed until the end of the last City Council Meeting where he learned that hard copies of the fish/stream inventory are available for $125.

Commissioner McClelland reported that she would not be present at either of the Commission Meetings in April. Chair Doennebrink excused her from the meetings.

## 7. UNFINISHED BUSINESS

There was no unfinished business scheduled on the agenda.

## 8. NEW BUSINESS

There was no new business scheduled on the agenda.

## 9. AGENDA FOR NEXT MEETING

Mr. Stewart referred to the staff report that was provided to the City Council regarding the Stream Inventory. The staff's recommendation was accepted by the City Council, and he encouraged the Commission to pay particular attention to the scope of the review they have asked them to undertake. It focuses specifically on scientific information. Any comments and concerns from the scientific community regarding the document can be provided prior to the City Council adopting it as a final report. He said the report, itself, will provide the City with a very solid foundation for the next steps, which include the review and consideration of policy amendments in the Comprehensive Plan Environmental Section, as well as a review and possible amendments to the substance of the critical areas regulations.

As the third party review of the document indicated, it is well in advance and contains a lot more detail than most inventories that exist in the region. Staff is very proud to have completed the project to this point, and they anticipate it will be of great value and benefit in the years to come.

The Commission agreed that both the stream inventory and the critical areas regulations would be scheduled on the March 20, 2003 agenda.

**10. ADJOURNMENT**

The meeting was adjourned at 9:30 p.m.

Brian Doennebrink
Chair, Planning Commission

Lanie Curry
Clerk, Planning Commission

These Minutes Approved
April 3, 2003

# CITY OF SHORELINE

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

March 20, 2003
7:00 P.M.

Shoreline Conference Center
Board Room

**PRESENT**
Chair Doennebrink
Vice Chair Harris
Commissioner Doering
Commissioner Kuboi
Commissioner MacCully
Commissioner Gabbert
Commissioner McClelland
Commissioner Sands

**STAFF PRESENT**
Tim Stewart, Director, Planning & Development Services
Rachael Markle-Oleson, Planning Manager, Planning & Development Svcs
Anna Kolousek, Assistant Director, Planning & Development Services
Lanie Curry, Planning Commission Clerk

**ABSENT**
Commissioner Piro

### 1. CALL TO ORDER

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

### 2. ROLL CALL

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

### 3. APPROVAL OF AGENDA

COMMISSIONER DOERING MOVED TO APPROVE THE AGENDA AS PROPOSED. COMMISSIONER KUBOI SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

### 4. APPROVAL OF MINUTES

THE MINUTES OF FEBRUARY 6, 2003 WERE APPROVED AS AMENDED.

Commissioner Gabbert expressed his desire that the derogatory comments made by Mr. Poland at the last meeting be included in the minutes. These comments were specifically directed toward Chair Doennebrink and Vice Chair Harris.

Mr. Stewart said if the Commission would like to have more detailed and extensive comments of that public hearing, they could direct staff to expand upon the minutes, based upon the record and resubmit them at a future meeting for the Commission's consideration.

Commissioner MacCully said he is opposed to reflecting the inflammatory comments in the minutes. He explained that the intent of the minutes, in general, is to convey a sense of the pertinent points that were brought forward. Insulting comments do not need to be made a matter of public record. Part of their job is to act as a sounding board for people's frustrations, and he did not feel the Commission should exacerbate these situations by putting the comments in writing.

Commissioner Gabbert reminded the Commission that part of the admonition the Commission Chair provides prior to the opening of a public hearing is that people use proper décor in their conduct. If this cannot be followed, then the Commission minutes should reflect what people are actually saying.

Vice Chair Harris said he has no problem with the derogatory comments being placed in the minutes, if they accurately reflect what was said.

Commissioner Doering said she does not see the benefit of including derogatory comments in the minutes. While it is important that the minutes accurately reflect a citizen's viewpoint, including personal derogatory statements would provide no benefit to the decision making process. Therefore, she agreed with Commissioner MacCully that these types of statements should be edited out of the minutes.

Commissioner McClelland questioned how the minute taker decides what statements to take out of the minutes. Does she make this arbitrary decision on her own? She said sometimes when looking back at past minutes to get historical context, it is helpful to know that issues were hot and that people were angry. If there is a way to reflect emotion in the minutes, she felt it would be appropriate since it would help people understand some of the feelings that were going on.

Mr. Stewart said the minutes are prepared for the Planning Commission, and they should be responsible for setting the standard as to how they want to record their meetings. Typically, the spectrum of minutes goes from very brief summary minutes to verbatim transcripts. Up to this time, the standard has been somewhere in the middle. They try to provide a fairly full record, especially on matters of quasi-judicial importance that can be appealed. He suggested that the minutes should reflect accurately the proceedings and tone of each of the meetings.

Commissioner Doering inquired if it would be appropriate for the chair or one of the Commissioners to ask that the minutes reflect that this person had very strong feelings to the point of perhaps using inappropriate personal comments that were not related to the issue. Commissioner McClelland

cautioned that this could open the issue up to a lot of discretion in deciding what they should put in the minutes.

Commissioner Kuboi agreed with Commissioner MacCully's perspective. But he questioned if there has ever been an instance where the Commission has regretted not having captured the flavor of a comment as opposed to the substantive point made. Mr. Stewart said that in the spring of 1998, prior to when the Commission started keeping written minutes, there was a huge amount of confusion about was done and what was said. That was one of the reasons the Commission moved towards formal written minutes, to provide a basis for confirming the actions of the Commission, the motions, etc.

Commissioner Kuboi said he does not disagree that formal minutes are important, but he questioned how important it is that the minutes reflect the flavor of the emotional content as opposed to the substantive material content of public statements. If this has never been an issue in the past, then the additional effort to try to translate somebody's emotional or non-substantive body or verbal language into something acceptable for minutes might not be worth the effort.

Mr. Stewart said his understanding of the issue was related to specificity of the comments and whether the comments should be placed in the record as direct quotes or if the comments should be generalized or summarized. The Commission needs to decide how detailed and complete the recording of the comments should be. He cautioned that there is a cost to providing transcript style minutes. He noted that the City keeps the tape recordings of each of the meetings, also.

Vice Chair Harris said he has a problem with the minute writer attempting to summarize or interpret his thoughts. He likes minutes that are a little bit more accurate as to what was said verses interpretive. He recalled that he had to make a correction to his statements in the February 6 minutes because the minute taker's interpretation of his comments did not make sense. In some cases it is good to have the minutes verbatim rather than summarized, and he supports Commissioner Gabbert's point of view.

THE COMMISSION ADOPTED THE MINUTES OF MARCH 6, 2003 AS AMENDED.

## 5. PUBLIC COMMENT

**Janet Way**, 940 North 147th Street, said it is her understanding that tonight's agenda includes a continuation of the public hearing for the amendments to the critical areas procedures, as well as a presentation regarding the stream characterization study. She asked the Commission to share their plans for the process and timing of this review. For instance, she asked if the stream characterization study would be continued to a future meeting. If so, would additional public input be allowed? Because there are so many visuals available for this issue, perhaps it would be appropriate to hold a public workshop. Chair Doennebrink advised that this issue would be covered as one of the items scheduled in the staff report.

**Patty Crawford**, 2326 North 155th Street, said she does not condone, in any way, the comments made by Mr. Poland at the last meeting. However, she does not think it is fair for the Commission to record everything that is said by citizens, but not everything that is said in their executive sessions about others.

Chair Doennebrink clarified that the Commission does not hold executive sessions. All of the Commission meetings are open to the public. Ms. Crawford stated that, at the very least, the Commissioners talk to each other one on one, and the citizens don't hear a lot of these inner discussions. She concluded that she does not feel it would serve any purpose to drag Mr. Poland through the mud just because the Commissioners got their feelings hurt. They need to have thicker skins.

## 6. REPORTS OF COMMISSIONERS

Commissioner Doering said that because she had strong feelings about tone of the last public hearing on March 6, 2003, she prepared a written statement of response. She said she knows she is not the only one who was offended and frustrated by the negative and belittling personal attacks aimed at the staff and the Commission. The staff received a letter from a member of the audience expressing that he was also offended. She said the Commission has some very difficult issues to attend to in their meetings, and she takes her job very seriously. She has worked with Mr. Stewart and his staff for three and a half years. While they don't always agree, they disagree respectfully. She asked that everyone remember that staff's job is to present the facts from their perspective, as planners. It is her job, as a Commissioner, to listen and use her best efforts to exercise knowledge of the community and the subject matter to arrive at a decision to present to the City Council for recommendation. The hashing of old suits, old issues, and personal attacks wastes her time, the other citizens' time, and detracts from focusing on solutions. She urged the citizens and Commission to work together and not pollute the meetings with acts of bitterness and ill will towards the Commission and the City staff. They have an opportunity to build a coalition of problem solving solutions for salmon, trees, people, automobiles, and to embrace the community's future.

Commissioner MacCully said that in the minutes of February 6, 2003, the Commission identified future issues they wanted to consider. One was cottage housing. He said it is important that these issues be kept in mind as possible topics for future workshops.

## 7. STAFF REPORTS

### a. Announcements

Mr. Stewart recalled that the agenda identifies a possible special meeting on March 27, 2003. This meeting would depend upon how tonight's meeting evolves and how much the Commission is able to accomplish. However, the consultant will not be available to the Commission on March 27th. In addition, Mr. Stewart said the City received a comment from the State Resource Agency that staff would like to more carefully consider with the consultant. They probably won't be ready to have a proper response for the Commission by March 27th.

### b. Continued Public Hearing on Proposed Amendments to the Critical Areas Procedures

**Chris Eggen**, 15104 – 11th NE, thanked the Commission for continuing the comment period. He said he feels very strongly about this issue. As he read through the proposed amendments, he was struck by how much would be changed. A significant amount of text has been changed and reorganized. When this happens, there could be unintended consequences to the procedure and process.

Mr. Eggen referred to a letter he submitted to the Commission regarding the issue and summarized the issues he raised. He referred to Section 20.80.340b, which refers back to Section 20.30.60 to identify how a critical areas special use permit shall be granted. He noted that the new procedure involves an option of whether the City Council or Hearing Examiner would make the decision. The proposed amendment would place the City in a position in the future where they both propose a critical areas special use permit and then grant it to themselves. This is not a good separation of power.

Mr. Eggan referred to new Section 20.80.350b, which provides decision criteria for whether or not a reasonable use permit shall be granted. He noted that the old Item 2, which asked whether there were feasible and reasonable alternative designs on the property that would not affect the critical area, was eliminated. He noted that a critical use permit is, basically, a waiver for a private homeowner who has property that is deemed a critical area so that he can use it for his economic benefit. The old section said the City could ask if there are other reasonable alternatives for design that would not affect the critical areas. This has been deleted. Without this section, a developer is free to do all kinds of questionable maneuvers. He urged the Commission to carefully work out these types of technical issues. He also urged the Commission to read the letter he submitted, as well as the one from the Department of Fish and Wildlife that was received by the City today.

THE PUBLIC PORTION OF THE HEARING WAS CLOSED.

Commissioner MacCully recalled that one concern raised at the last meeting was the rational behind the proposed amendment changing Type C actions to Type B actions. He suggested that the Commission begin their discussion by asking staff to provide a description of the proposed amendments and their impacts. He said he tends to be concerned about moving any process that has traditionally been a public process out of the public arena. When considering changes that take away from the public process, he is interested in knowing why.

Ms. Kolousek referred the Commission to the third paragraph on Page 32 of their packet, which identifies the rationale behind the proposal. It states, "the criteria appear to sound appropriate, but when reviewed closely, can be shown to conflict with case law. For example, the current criteria states that the applicant must demonstrate that no other use is 'possible,' which conflicts with the concept of 'reasonable' use. Preservation of habitat is a 'possible' use, but probably not a 'reasonable' use for the property owner." She concluded that the criteria, basically, eliminated the potential of the owners for due process or just compensation. As a result of this conflict, Ms. Kolousek said the City Attorney has recommended that this section be revised. In order to strengthen the protection section and not take away from the procedures, staff felt that describing the reasonability in some threshold would allow some use and would not constitute a taking.

Staff has opted for the new criteria as specified in the proposal. In the proposed criteria, staff tried to define the reasonable use. Most people picked up on the 800 square foot building footprint, which is the threshold that has been tested as the footprint for a reasonable single-family house.

Ms. Kolousek referred to the picture on Page 33, which explains how the reasonable use criteria would apply within and outside the critical area line limited. If the critical area (Figure A) extends only to a portion of the property, the footprint outside of the critical area would not be limited. However, where the critical area (Figures B and C) extends over most of the property, the City must allow some reasonable footprint in order to prevent taking. If the reasonable footprint (Figure D) cannot be accommodated in the area that is not within the critical area, the Planning and Development Services Director could administratively approve the footprint location. For instance, the footprint could encroach into the setback, which are outside the critical area. The consultants and legal advisers have assured that, using these criteria, the City would be avoiding situations of constitutional taking. The intent of the proposed amendment is to set clear criteria that are reasonable. If the Commission does not agree that the criteria is reasonable, they can recommend against the change and/or retain the public hearing process under Type C.

Commissioner MacCully said it appears that critical areas special use permits and reasonable use permits are "hot" public issues. Right now, the City Council is involved in the decision making process, with the Hearing Examiner doing the review. The proposed amendment would take the City Council out of the process. That would mean the Hearing Examiner would not only have the decision-making authority, he would also have the appeal authority. The Planning Commission would not be involved in the process.

Mr. Stewart briefly reviewed the four types of land use actions outlined in the City's code as follows:

- **Type A**—These actions are purely administrative in nature. If a project meets the uniform development code and the proposed building is consistent with zoning, a permit would be issued with no discretion involved. Appeals to the issuance of a building permit are made directly to the Superior Court.
- **Type B**—These actions involve some discretion—usually the application of some type of criteria. Public notice and a public comment period would be required before staff could issue an administrative decision. Appeals are to the Hearing Examiner, who would conduct an open record public hearing and issue a decision. This would become the final decision of the City.
- **Type C**—These actions are quasi-judicial. The level of discretion in a quasi-judicial matter is much greater than either Type A or Type B Actions. There are rigorous rules that must be used when applying the criteria. Under the current code, most Type C decisions are made by the City Council. Appeals to the City Council's decision go to the Superior Court.
- **Type L**—These actions are related to amendments to the code or the Comprehensive Plan. Public hearings are conducted, but the rules for legislative hearings are not as stringent as quasi-judicial rules. There is a much broader opportunity for ex-parte communication, and discussions of the proposal are much more free and open.

Mr. Stewart explained that under the current code, there are three types of critical area actions, two that are Type C Actions and one that is a Type B Action. A critical areas special use permit requires an open record hearing by the Hearing Examiner with a recommendation to the City Council. A critical areas reasonable use permit is both heard and decided by the Hearing Examiner. The zoning variance could also be applied to a critical area, and this is a Type B Action. A permit is issued by staff after public notice, and it is appealable to the Hearing Examiner.

Mr. Stewart said that, at this time, the three processes are very confusing and provide great opportunity for discussion amongst the legal community about proper procedure. The intent is to simplify the process so that everyone understands what the rules are. That is why staff is proposing that the current process be consolidated into a simpler process. However, it is up to the Commission to decide whether the action will be Type B or Type C. If the Commission believes that specific criteria can be established to allow for an administrative judgment, with very little discretion, then it should be a Type B Action. If the criteria is less clear and requires a high level of discretion, then maybe it should remain as a Type C Action.

Paul Inghram, Project Consultant, said that currently the code allows a variance to apply to a buffer, but one of the proposed amendments would remove buffers from the variance criteria language. Variances would apply to typical zoning standards, but would not apply to critical areas standards. He explained that there would still be two processes for critical areas actions, but they have proposed changes to the special use application process. He said that, right now, it could apply to a private developer and the criteria is relatively vague. The proposed amendment would narrow the special use permit so that it only applies to specific municipal or utility types of projects that really don't fit within the reasonable use criteria. They also attempted to refine the criteria so it applies just to the very specific definition of a reasonable use in order to prevent situations of constitutional taking.

Ms. Kolousek emphasized that the variance criteria would be changed. At this time, a developer has the option of applying for a variance that would allow him to develop within the buffer area. The proposed amendment would eliminate this opportunity. The variance process would no longer be applicable for properties within the buffer area. The applicant would have to apply for a critical areas reasonable use permit and comply with all the protection standards for the critical areas.

Chair Doennebrink clarified that a private citizens or a business, but not a utility, would be required to go through the reasonable use permit process. Mr. Stewart agreed, and added that would be the only option available. Chair Doennebrink clarified that the proposed amendment would tighten the applicability of the other two processes so that they don't apply to the lions share of the situations the City expects to encounter.

The Commission questioned what types of uses would be included in the definition of a "public utility." Mr. Inghram clarified that they attempted to improve the definition of "public utilities." These utilities would include public utilities such as Puget Sound Energy, but not utilities like cell towers, etc. related to commercial enterprises. He briefly reviewed the proposed definition.

Commissioner MacCully clarified that the definition is primarily applied to the critical areas special use permit. Mr. Inghram agreed. Commissioner MacCully noted that there is no proposal to change this from a Type C to a Type B Action. However, the amendments do propose that the decision making authority be granted to the Hearing Examiner rather than the City Council. He inquired why this change is being proposed. Mr. Inghram said one of the key reasons is the appearance of conflict of interest with City projects. The Hearing Examiner acts as an independent body. But if the City Council were to make a decision related to a City Project, there is a possibility of this becoming an appearance of fairness issue.

Commissioner McClelland said the proposed amendments that would no longer allow variances within buffer areas makes good sense. But with regard to the reasonable use permit, she felt they got off on the wrong foot by using cottage housing as an example. She said cottage housing is not all that popular among some people right now, and may have been the wrong example to use. Two weeks ago, the proposed amendments came across as saying development on properties with critical areas would be limited to an 800 square foot structure. She said she doesn't agree with the presumption that all of the development would be residential neighborhoods. Therefore, they could say an "approximately 800 square foot structure." Commissioner McClelland said the amendments then go further by giving the Planning and Development Services Director discretion for setbacks, roadways, etc. It started out reasonable, but then it was expanded. It was the elasticity of the proposed amendments that began to make her feel uneasy. It is not that she doesn't trust the staff, but giving the director that much discretion bothers her. She summarized that there are two things to think about when considering reasonable use. The first is where it gets heard and whether the public will feel safe. The second is how they present it and whether the Commission feels comfortable with that kind of discretion. Chair Doennebrink agreed.

Commissioner Sands said he is having difficulty understanding how reasonable use actually works in specific situations. He inquired if the 800 square foot designation is some type of a "safe harbor kind of a rule." He said his understanding is that as long as a developer does not build anything larger than 800 square feet, and as long as the development is placed on the property in such a way as to minimize the damage to the buffer, then the permit would be granted. However, if the development is greater than 800 square feet, a different review process would be required. He asked that staff explain how the reasonable use process would work in specific situations.

Ms. Kolousek referred to Section 20.80.350 and cautioned that the Commission should not just look at one criterion but cumulatively on all criteria for review of the reasonable use permit. Mr. Inghram explained that proposals that are greater than 800 square feet in size would be allowed, but the most a development would be allowed to encroach within a buffer area is 800 square feet, provided that development is kept as far away from the stream as possible. Mr. Stewart added that the question the City faces is determining the minimum reasonable use that can be applied to a parcel that is otherwise unbuildable.

Commissioner Sands clarified that if a developer wants to build a 2,400 square foot house, which would extend into the buffer by 800 feet, it would be possible for him to seek a variance in the other direction

to get closer to the street by 800 feet, instead. He questioned if there is something that requires a developer to go that way first to protect the buffer.
Mr. Inghram briefly reviewed how the reasonable use permit would work. He said the intent is that the critical areas standards should control development. You should not be allowed to go through another type of permit process that would go away from these standards. However, because the constitution states that the City cannot deprive property owners of reasonable use of their property, they must provide a reasonable use process. He said the idea is that if critical areas occupy a portion of the property and no reasonable use applies, a property owner could build a structure that has a footprint of up to 800 square feet in size.

Commissioner McClelland clarified that if a property has enough buildable area for a house, all a developer would have to do is meet the standards of the codes for developing single-family homes. She inquired if a person would be allowed to build the same size of house that would be allowed if there was no critical area on the property. Mr. Stewart used a map to clarify that permits would be granted for development of property that is not within the critical area or buffer. The development would not be limited to 800 square feet provided that all of the other regulations can be met. The 800 square foot limitation is only applicable for development that encroaches into the critical areas and their buffers.

Commissioner McClelland inquired how the City would ensure that a development does not encroach into a buffer area. Mr. Stewart answered that the City would issue a building permit. If a developer encroaches into the buffer area, a code enforcement action would be initiated.

Mr. Inghram reviewed that in Situation 2 the building would occupy about half of the site, and the buildable area is less than 800 square feet. A reasonable use permit would be allowed for up to an 800 square foot footprint, but the development would have to be located so as to minimize the intrusion into the critical area. Commissioner McClelland inquired if this would be the type of situation where the director could exercise his discretion to reduce the front yard setback in order to keep the house out of the critical area. Mr. Stewart explained that a Type B Action is a decision by the director that is appealable to the Hearing Examiner in an open record public hearing. The Hearing Examiner's decision would be the final decision.

Mr. Inghram explained that by going through the reasonable use process, the director would have the ability to grant a reduction in the front yard setback in order to prevent intrusion into the critical area. This would still only apply to what is defined as a reasonable use. It is not an allowance to get a variance to construct a 2,400 square foot building. Commissioner Sands inquired if the property owner would have any discretion as to which of the scenarios he gets. Mr. Inghram said that this decision would have to take the site conditions into account. For example, there could be a slope in the front yard that does not warrant the structure being located further into the front yard setback. However, the criteria for the reasonable use permit requires that the impact to critical areas be minimized as much as possible.

Commissioner McClelland expressed her concern that the 800 square foot maximum size limit appears to be arbitrary. Mr. Stewart disagreed because there is evidence in the market place that 800 square foot

dwellings are marketable uses. As long as the City can demonstrate that there is an economically viable use, they could justify it as a reasonable use.
He said when staff tried to make a judgment on the minimum reasonable use, they were faced with exactly the same dilemma the Commission is now facing because there is no guidance as to reasonable economic use.

Commissioner McClelland suggested that they call the permit a "reasonable economic use permit." Mr. Inghram explained that under the courts, economics might not be the only determinable factor as to what is reasonable.

Commissioner Gabbert agreed with Commissioner McClelland that there should be something more than just arbitrarily placing an 800 square foot limitation on development. This could really limit a property owner with the same amount of open space as an adjacent property owner. There needs to be some type of formula that would allow a home to be at least equivalent in size or close to the surrounding houses.

Commissioner Kuboi said he does not disagree that more could be done with this section, but the goal is to set a minimum standard that could stand up in court so that constitutional issues do not arise. If they can allow people an avenue to develop at least an 800 square foot structure on their property, the City would be protected from legal challenges.

Commissioner Sands said that at some point, the City will identify the buffer areas on individual properties, and the buffer lines will go through existing properties with existing homes. Some of these properties will be in compliance and some will not. He questioned if the City would notify the property owners that their homes are non-conforming. He also questioned if the buffer lines would change as streams change their course over the years.

Mr. Stewart said that the City has identified critical areas and buffers within their boundaries, and people are limited as to what they can do with their current properties. If development on a property exists legally, it is allowed to continue. The ordinance allows these property owners the right to reconstruct a property if it is demolished or destroyed, etc. Some ordinances amortize out pre-existing non-conforming uses, but the City of Shoreline's does not. It allows for reconstruction within a certain period of time. However, the current regulations would apply to any expansion of the footprint of the non-conforming uses. He summarized that the proposed amendments significantly tighten the City's critical areas regulations.

Commissioner McClelland inquired if the tightening up process is a reflection of the public sentiment. She also inquired if the City Council has the political will to go through with it. Mr. Stewart said the Growth Management Act requires the City to meet certain standards. One of the requirements is that the City review and update their critical areas ordinance by the fall of 2004. The City is in the process of doing this using a two-step process. Step one is the procedural corrections, which are before the Commission now. The next step will involve the substantive issues and will be more difficult. The substance will relate to the best available science, which includes the stream inventory.

Commissioner McClelland said she understands that the City is required to update their critical areas ordinance. However, she questioned if tightening the regulations is what the public wants them to do. Mr. Inghram explained that the intent is that the protection standards should effect how development occurs. They propose to remove the various multiple permit paths, and provide a set process for development of properties with critical areas.

Commissioner McClelland recalled that the first sentence in the Comprehensive Plans states that the intent is to keep Shoreline green. The value for the City is that they protect their streams, critical areas, trees, etc. If she felt confident that is what the citizens envision for the City, then tightening the regulations is good. This process is going to be difficult, and the changes have to be based on more than Growth Management requirements. She concluded that this is a big issue.

Commissioner MacCully said that while he agrees with staff's statement that 800 square foot homes sell, but only under certain circumstances, one of the reasons they sell is related to the community they are located in.

Commissioner MacCully said that if the goal is to create a process that is more definitive and based on best available science, he is not sure that 800 square feet would apply in a single-family residential situation. He said that an 800 square foot limitation for a single-family residence in an area of other single-family residential development does not appear to be reasonable. Ms. Kolousek noted that the 800 square foot limitation would not limit the size of the house, but only the footprint of the house. A person would still be allowed to build up to a 2,400 square foot residence on an 800 square foot footprint, using a three-story design.

Commissioner Sands said it is up to the Commission to decide if the City should allow a development to encroach into a buffer or critical area up to 800 square feet. If that is not the right number, they need to consider what is right.

Commissioner Doering inquired if the consultant modeled his proposed approach after another local or national community. If so, what other issues have been brought up. Mr. Inghram said they did not model their proposal strictly upon any specific community. Their firm has been working on this issue with several different communities in the State. They attempted to work with the existing code, and the approach for moving away from these permits is common throughout the various jurisdictions. For example, the City's current critical areas special use permit isn't really repeated in other communities. Other communities do have a similar permit for utilities. Mr. Inghram said that, to some extent, the proposed changes were modeled after what other communities are doing.

Commissioner Doering inquired if the more conservative policies have been accepted by the citizens of other jurisdictions. Mr. Inghram answered that most of the communities in the region have accepted the more conservative approach. Obviously, people who own property with critical areas are concerned. But as a general broad view of the public in the region, people value the natural environment.

Mr. Inghram reviewed another sample situation in which a property was entirely encumbered by a critical area and buffer. He pointed out how the structure was located as close as possible to the setback

lines. It does not take into account the possible opportunity for a variance to reduce the setbacks and move the structure further away from the critical area.
Commissioner Sands referred to Section B at the top of Page 33 of the Staff report. He suggested that the second sentence also needs to be placed in Section C, just below. Ms. Kolousek pointed out that one criteria requires that any alteration to the critical areas must be the minimum necessary to allow for reasonable use of the property.

**c. Presentation of the Stream Basin Characterization Study**

Mr. Stewart recalled that on March 3, 2003 the City Council referred the final draft report of the Stream Basin Characterization Study to the Planning Commission to receive and review any new scientific information and to report to the City Council its findings and recommendations. He referred to the City Council's recommendation (Page 39 of the Staff Report). He emphasized that this issue was not a referral for a public hearing, but merely to receive and review any new scientific information. This is important because the draft report is focused solely upon science, and not policy recommendations, capital improvements, or regulatory issues.

Mr. Stewart said the intent is that, with any scientific process, a document will be published. During the publication process there is an opportunity for comment, decent, impeding views, pier review, testing and challenges. The City wants to receive any challenges, new information and testing prior to the document's final acceptance. They would rather the test occur now than after the City has received the final report.

Mr. Stewart referred to the detailed letter from the Department of Fish and Wildlife that was received by the City on March 19, 2003. The letter raises a number of observations and issues. He suggested that the letter be referred to the scientists who wrote the stream report so that they can review the issues and provide their comments as to whether changes or adjustments to the stream inventory are warranted. This will not be possible by next Thursday. Therefore, he suggested that the issue be moved to a future meeting after the consultants have been able to review the letter and issue a report to the Commission.

Mr. Stewart said the report would provide the City with a foundation to develop policy recommendations and changes, regulatory recommendations and changes, and capital improvement proposals, if appropriate. These outcomes or actions would occur subsequent to the establishment of best available science.

Commissioner Sands inquired what would happen to the approved stream inventory if something changes to impact the drawings. Would the City modify the documents? Mr. Stewart answered affirmatively. Commissioner Sands summarized that the Department of Fish and Wildlife has indicated that they may modify a current fish barrier in the future. However, the stream inventory document is a snapshot of what currently exists now, not what may be in the future. If something changes in the future, modifications could be made to the document. Therefore, there is no need to draw the lines to accommodate a possible future change.

Commissioner Gabbert inquired if federal grants are available to assist the City in purchasing properties that are located in critical areas to create nice waterways and greenbelts. Mr. Stewart said this is very possible. One of the outcomes of this work is that the City would be able to make some judgments about very long term planning for their resources. The Growth Management Act requires the City to preserve existing functions and values and consider enhancing functions and values as they go through the planning process. As they talk about enhancing the function of a stream corridor, for example, that could include everything from changing the vegetation, installing water quality and stormwater devices, etc. It might even include the acquisition of private property for new open space. Perhaps they could even establish a habitat conservation area where the long-term goal is to expand and improve the existing habitat.

Commissioner McClelland referred to the last paragraph of the letter from the Department of Fish and Wildlife, which suggests that Ronald Bog be stocked with cutthroat trout. She felt this would provide a fun opportunity for the children to fish. Commissioner MacCully said that the Rotary Club stocks Echo Lake with thousands of trout in order to hold fishing derbies for the children.

PUBLIC COMMENT

**Janet Way**, 940 North 147th Street, Legal Defense Fund, Paramount Park Neighborhood, said she does not want to be prohibited from speaking the next time this issue comes before the Commission just because she is speaking now. Chair Doennebrink clarified that this issue is not a public hearing, and Ms. Way would be allowed to speak at a future hearing regarding this issue.

Ms. Way referred to Figure 2.3, which is a map of the Thornton Creek Stream Region. She said that TC-9, TC-8, and TC-13 are all identified as artificial open watercourses. The dark blue areas are just open watercourses. She said she does not understand the criteria that was used to distinguish one from the other. She suggested that that the identification be changed to "Type of Stream." Ms. Way said the consultant told them that the best reach in all Thornton Creek was at Paramount Park, which is a little creek that is no longer in its original location. Just because a watercourse has been moved has nothing to do with whether it is quality or not. It has more to do with the habitat and its value for fish.

Commissioner McClelland pointed out that the Fish and Wildlife letter includes the following definition for artificial watercourses: "Watercourses and road side ditches that flow only during and immediately after rain and do not contain water sufficiently long enough to support aquatic plants and fish.

Ms. Way referred to Page 4-9 of the study, and read the second paragraph. It states that "Salmon prefer large streams, and adult Chinook observed near the mouth of Thornton Creek may have been fish searching for their home stream. There is no documented evidence of Chinook spawning in the creek." Ms. Way said that is just out right wrong. She knows people who have seen Chinook. Mr. Stewart asked if Ms. Way could provide the scientific information to support her statement. Ms. Way answered that Seattle Pacific Utilities has these records.

Mr. Inghram clarified that if Ms. Way is referring to someone seeing fish spawning above a barrier dam that does not allow fish to pass, he is curious as to how the fish got there if they can't get there by swimming. Ms. Way said the Chinook and Coho Salmon are pretty amazing. They can jump really, really high.

She referred to Longfellow Creek, which has a very long culvert that goes under a steel plant. The Coho make it all the way through the culvert. Mr. Inghram said that he can understand that if there is no barrier, but Thornton Creek has a barrier under the freeway. Ms. Way said that, while the map identifies a barrier, Fish and Wildlife has indicated that there is no barrier, and there is potential for habitat upstream. Ms. Way pointed out that while fish cannot get up Snoqualmie Falls, the river above the falls is still considered a river.

Ms. Way said she objects to the name they have given the Kim Wetlands. Mr. Kim was the man who tried to build three houses on his wetland and was stopped. His name should not be on that wetland.

**Patty Crawford**, 2326 North 155th Street, referred to the minutes from the last meeting (Page 17 of the Staff Report). She said that in the third paragraph she was referring to the City's consultant.

Ms. Crawford referred to the code definition for a "Salmonid." She suggested that the standard set for determining what is a salmon and what is a fish is too high. She noted that Item B identifies rainbow, steelhead and cutthroat salmon. Cutthroat are a member of the salmonid group and in the salmon family. There are resident cutthroat living in the City all year round and do all their breeding, living, eating, etc. here. To try to say that there are no fish in Shoreline because they do not have migrating Chinook from the lake is totally wrong.

Ms. Crawford provided a number of folders with information for the Planning Commission's review. It included the following items:

- Maps of her neighborhood and the church next door. She noted that in the middle of the map is a grass swale protecting the side channel, and this is considered to be a sensitive feature.
- A list prepared by Virginia Botham identifying all of the environmental elements of the Comprehensive Plan.
- The Surface Water Contract. She retyped the old copy from 1963 because it was hard to read. There is a debate on whether the side channel that runs down the freeway right-of-way is a stream or not. If it is not a natural stream, it is a potentially created stream. Section 20.80.470.E indicates that the only other stream is the intentionally created stream. These are manmade streams defined in such regulations and do not include streams created as mitigation. She asked that the Commission read the contract. This was mitigation for when the freeway came through her neighborhood. It mitigated sending the first 17 cubic feet of water through her yard and through Twin Ponds, and it mitigated that the overflow be brought down the Department of Transportation right-of-way. The most important part is on the last page where it identifies the rights of the state. It says the State agrees to accept and disperse permanently, through the highway system, all drainage waters in excess of those waters. The contract indicates that the creek was divided in 1963 in order to move it out of the way to build a cul-de-sac. The stream comes back together at the Aegis site.

- Court Case Studies. Ms. Crawford commented regarding Commissioner Doering statement relating to the "hashing of old suits." She said she doesn't feel that is a fair comment. The City's court experiences are driving the code changes that are being proposed. The citizens should be able to provide their side of the court processes. The Gaston decision is a vital decision that should be carefully considered. The reasonable use amendments are designed to allow exemptions to address messes that are made by the property owner.
- City of Shoreline letters. Ms. Crawford said it is important for the Commission to see how much stream inventory information was withheld from her. The document went into an executive review and then was supposed to be taken out for a second opinion. She said this concerns her. The Commission needs to find out what was wrong with the first review.
- The 1998 Letter from Ed Mulhern, where he talked about working in coordination with Fish and Wildlife. He said the City staff looks forward to a working relationship with the owners and caretakers of Thornton Creek. Well, a few years later, they tore up her backyard and said it was a ditch.
- Information about the stream in her neighborhood and the side channels. The recent letter from Washington Trout talks about the side channels.
- A 1987 letter from Fish and Wildlife regarding side channels.
- A letter that Doug Hennick sent to the mayor about what was going on.
- A letter dated November 6, 2001, stating that the side channels should not be considered non-streams.

Ms. Crawford said her last point is related to the standards for determining if a watercourse is artificial. A 1998 letter to the City encouraged the City of Shoreline to create more ponds along the stream length, creating habitat for Coho. She said she is really tired of her development being threatened. Lastly, Ms. Crawford said that as the Commission reviews the stream inventory, they will find diversion structures, banks stabilization, bank protection, guides, etc. They talk about how to provide overflow channels, conveyance capacity, etc. They even provide a picture illustrating what you are supposed to do. An overflow channel is definitely going to be manmade, but it will still convey a stream. She expressed her concern about the problems associated with trying to separate artificially created watercourses. The code calls them intentionally created, and the staff is calling them artificially created. If the stream cannot be turned off, it is natural.

Mr. Stewart again stated that the City would be happy to receive any additional scientific information. The staff will then work with the scientist to review the new information and report the results to the Commission.

Commissioner Kuboi inquired when the staff would instruct the consultant on the next round of research. Mr. Stewart said he would have to work this out with the public works department, who is the project manager for the consultant contract to make sure there are sufficient funds to do the review. He expects it will take at least two weeks for staff to negotiate the review and provide a report.

Commissioner Kuboi said he sees the Commission's role as helping the staff focus and identify areas where they would like emphasis to be placed. Some of the themes from the public comment seem to be a little outside of the realm of best available science and more in the realm of policy and politics. He said he wouldn't want the consultant to be off doing literature searches on arcane biological facts that really aren't going to be the facts that make the document usable for the City and public.

Mr. Stewart explained that the staff and the consultant would sift through the comments and determine whether they are scientific or anecdotal. While the anecdotal comments may, in fact, be true, they need to be presented in the form of a scientific study. If scientific data is presented to support a comment, then the study should address the issue. Mr. Stewart clarified that this process is entirely separate from legal classifications. They must be very careful not to supply legal classifications, because these are more related to policy and regulatory questions. The goal is to work solely on a scientific basis.

## 8. UNFINISHED BUSINESS

There was no unfinished business scheduled on the agenda.

## 9. NEW BUSINESS

There was no new business scheduled on the agenda.

## 10. AGENDA FOR NEXT MEETING

The Commission discussed whether or not a special meeting should be scheduled for March 27th. Ms. Markle pointed out that the April 3rd agenda includes Planning Commission elections and review of Commission by-law changes. In addition, the amendments to the critical areas procedures are scheduled for April 3rd. Mr. Stewart said staff would also provide responses to the Stream Basin Characteristic Study as soon as possible.

Commissioner MacCully inquired regarding the rules for nominating and reelecting Planning Commission Officers. Ms. Markle advised that the rules allow the chair and vice chair of the Commission to serve two consecutive terms. Nominations can be made by anyone for any position. A Commissioner also has the ability to nominate themselves. She said she would send out a memorandum to clarify the election process further.

Commissioner Kuboi said he likes the margin comment format that is used by staff. He suggested that this format be used more often.

Commissioner MacCully thanked the staff for their work on the critical areas procedures and the stream basin study. He also thanked the members of the public who have a lot of persistence. He assured them that the Commission values their input, and he believes the staff does also. The goal should be to create an environment where they can work together, even if they don't agree with each other.

## 11. ADJOURNMENT

The meeting was adjourned at 9:30 p.m.

Brian Doennebrink
Chair, Planning Commission

Lanie Curry
Clerk, Planning Commission

These Minutes Approved
April 17, 2003

# CITY OF SHORELINE

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

April 3, 2003 — Shoreline Conference Center
7:00 P.M. — Board Room

**PRESENT**
Chair Doennebrink
Vice Chair Harris
Commissioner Doering
Commissioner Gabbert
Commissioner MacCully
Commissioner Sands

**STAFF PRESENT**
Tim Stewart, Director, Planning & Development Services
Anna Kolousek, Asst. Director, Planning & Development Services
Rachael Markle-Oleson, Planning Manager, Planning & Development Svcs
Ian Sievers, City Attorney
Lanie Curry, Planning Commission Clerk
Paul Inghram, Consultant

**ABSENT**
Commissioner McClelland
Commissioner Kuboi
Commissioner Piro

### 1. CALL TO ORDER

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

### 2. ROLL CALL

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

### 3. APPROVAL OF AGENDA

COMMISSIONER DOERING MOVED TO APPROVE THE AGENDA AS PROPOSED. COMMISSIONER SANDS SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

### 4. APPROVAL OF MINUTES

COMMISSIONER DOERING MOVED TO ACCEPT THE MINUTES OF MARCH 7, 2002 AS PRESENTED. COMMISSIONER MacCULLY SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

## 5. PUBLIC COMMENT

**Tim Crawford**, 2326 North 155th Street, read portions of a letter the City received from Richard A. Costello from the Washington State Department of Fish and Wildlife. He referred to a question raised at a previous meeting by one of the Commissioners about whether the City could treat a watercourse in any manner they choose in the six years before the watercourse is approved? Mr. Crawford said he certainly hopes that is not the direction the City is headed.

Mr. Crawford referred to the first paragraph on Page 2 of the letter which states, "Another result of Mrs. Wilder's investigation is a determination that the watercourse labeled TC8 in the Stream Basin Characterization Report is a stream which is rearing habitat for juvenile Coho Salmon." Mr. Crawford said this stream is the watercourse that flows south at the toe of the freeway berm, joining Thornton Creek mainstream immediately downstream of Peverly Pond." Mr. Crawford said Mrs. Wilder indicated that she has seen Coho rearing in streams which have worse habitat potential than this tributary, and she has no doubt that Coho will use it for rearing when adult Coho once again have access to the area. He said this is the same conclusion reached by every other Washington Department of Fish and Wildlife (WDFW) biologist who has looked at the stream. They have also seen Coho rearing in streams with apparently less habitat value than TC8. None of these are expert witnesses hired by he and his wife. They all work for Washington State. Mr. Crawford said the letter goes on to state that the WDFW has determined that "although TC8 has been denied the flow of Thornton Creek by the water diversion structure at the TC7/TC8 juncture, this watercourse is still a stream."

**Pat Crawford**, 2326 North 155th Street, continued to read portions of the WDFW letter. She said the letter states that "Because spring water collects in this channel, the flow downhill is a channel which joins Thornton Creek as a tributary. It is a formerly existing stream, which has been altered by humans, but is still water for fish habitat. TC8 is not a totally artificial watercourse. It carries around water which has come to the surface as spring water." Ms. Crawford said that because it flows throughout most of the autumn, all winter, and most of spring, it has aquatic plants growing in it, and it has an associated wetlands. The letter goes on to state that "The fact that this habitat community has developed in segments and that it has accumulated in a wide concrete trough does not eliminate the fact that it is a stream and would be used for Coho rearing if they had access. In contrast, totally artificial watercourses in roadside ditches will only flow during immediate rain. It is also being used by Cutthroat right now."

Ms. Crawford said she also wanted to let the Commission know that while the letter may seem like such a surprise, she hopes the Commission will also read her file of the fish letters. The last two letters from WDFW specifically talked about TC8 and designated it a stream rather than an artificial watercourse. The letters also ask that the City protect it as a stream. She reminded the Commission that the stream inventory tries to designate the stream as a non-salmonid habitat.
But the WDFW letter states over and over that there is salmonid habitat. Ms. Crawford reminded the Commission that when they deal with non-salmonid habitat they deal with the functions and values of

the sensitive feature. When dealing with a salmonid or priority habitat, they are leaving out the fact that the buffer is part of the sensitive area and not a separate entity. The buffered stream is the sensitive area, and not just the stream.

## 6. REPORTS OF COMMISSIONERS

### a. Planning Commission Bylaw Amendments

Ms. Markle referred the Commission to the color-coded copies of the proposed Commission bylaws, which include all of the suggestions from the Commissioners. She advised that the Commission could take action to approve the bylaws after reviewing the draft amendments.

Commissioner Doering referred to Article II, Section 3 and suggested that each of the paragraphs in this section be reduced to bullets to make the section more clear. Commissioner Sands said he is not in favor of using bullets in bylaws. Commissioner Doering suggested that the last paragraph in the vice-chair section seems to be redundant because it is mentioned word for word in a previous paragraph. She also indicated that she prefers the new language proposed by staff for the last paragraph of this section.

Next, Commissioner Doering referred to Article IV and suggested that the word "designee" seems too vague. Mr. Stewart said this would mean any officially designated representative.

Commissioner Doering referred to Article VIII and suggested that the words "as required by law" be deleted. She said she feels the Commissioners should meet the appearance of fairness standards whether or not it is required by law. Mr. Sievers said this would be a tough rule to impose in the future. He said the Commission hears a lot of legislative matters, and it would be unfair for the Commissioners to be held to the higher standard when not required by law.

Commissioner Doering referred to Article IV, Section 3, and inquired when the Commission would actually start timing a person's public comment. Chair Doennebrink said the time should start after the person has stated their name and address. The Commission agreed.

Chair Doennebrink referred to the second paragraph in Article II, Section 3, which relates to consecutive terms for Commission officers. Commissioner Sands said this issue was addressed by Ms. Markle's consolidation of Commission requested bylaw amendments. It states, "The term of office shall be defined as one year. A Commissioner may serve as chair for no more than two consecutive terms." Commissioner Doering inquired if this would prohibit a Commissioner from serving another term as chair or vice chair, as long as it is not consecutive. Chair Doennebrink answered that a Commissioner would be allowed to serve two terms consecutively, take a year or more off, and then serve again.

COMMISSIONER GABBERT MOVED THAT THE COMMISSION ACCEPT THE PLANNING COMMISSION BYLAWS AS REVISED IN THE DOCUMENT DATED APRIL 3, 2003. VICE CHAIR HARRIS SECONDED THE MOTION. THE MOTION CARRIED 6-0.

## 7. STAFF REPORTS

a. **Continued Deliberation on the Procedural Amendments to the Critical Areas Ordinance**

Ms. Kolousek suggested that, at this point, the Commission should proceed to review the matrix provided, request any additional information they need and make recommendations for each item.

Commissioner Doering referred to **Proposed Amendment 1,** which clarifies the purpose section. She suggested that the items in this section be alphabetized or numbered rather than just listed as bullets.

Chair Doennebrink noted that the **Proposed Amendment 3,** which grants the Hearing Examiner quasi-judicial authority on some matters, is dependent upon **Proposed Amendment 10.**

Commissioner MacCully referred to **Proposed Amendment 5** related to the building footprint. He inquired if the footprint would include the garage, if it is not attached to the home. Ms. Kolousek answered that the garage would be included as part of the footprint.

Chair Doennebrink recalled that at the last meeting the Commission discussed **Proposed Amendment 9,** which would change a critical areas reasonable use permit from a Type C to a Type B action. Ms. Kolousek suggested that the Commission postpone their consideration of **Proposed Amendment 9** until after they have reviewed the criteria found in **Section 20.30.350,** which is **Proposed Amendment 15.** She explained that the way the code is structured, the table summarizing the types of action refers to the section that addresses the criteria.

Ms. Kolousek referred to **Proposed Amendment 10,** which is connected to a special use permit. She referred to **Table 20.30.060,** and noted that the fifth item on the list is the critical areas special use permit. The table indicates that the decision-making authority would be the Hearing Examiner. The appeal would go to Superior Court.

Commissioner Doering asked that staff share their philosophy for proposing that appeals to critical areas special use permit applications go straight to the Superior Court instead of the City Council. She said she would lean more towards having the City Council hear these appeals. Ms. Kolousek answered that staff's recommendation is based on the concept of obtaining an unbiased judgment by somebody who hears cases on a regular basis rather than legislators making decisions. She asked that Mr. Inghram provide his comments about how other jurisdictions handle these issues. Mr. Inghram explained that a special use permit for critical areas is designed for utility projects, which may sometimes be municipal projects. If the City Council is the decision-maker, they may also be the proponents of the project.

Commissioner MacCully inquired who is eligible to apply for a critical areas special use permit. Is it only for utility companies? Mr. Inghram explained that municipal agencies and utility companies can apply for critical areas special use permits. Mr. MacCully noted that utilities include cable television, water and sewer lines, etc. Mr. Inghram said the Commission might want to review the modified definition of utilities.

Commissioner Gabbert recalled that about a year ago, the Commission recommended that, in some special instances, special use permits must come before the Planning Commission for review. Ms.

Kolousek said a special use permit is Type C and Planning Commission is the review authority. Critical Areas Special Use Permit, also Type C, is applicable only for critical area and the review authority is the Hearing Examiner.

Commissioner MacCully referred to **Proposed Amendment 10** and questioned the difference between those who can apply for critical areas special use permits and reasonable use permits. Ms. Kolousek answered that only public or private utility companies that are operating within the municipality can apply for a critical areas special use permit. The definition clearly specifies what is considered a private utility. Anyone can apply for a reasonable use permit. A reasonable use permit is intended to allow the due process for someone who has no other reasonable use of their property.

Commissioner MacCully noted that no changes are proposed to the review and appeal authority for the reasonable use permit, but staff is proposing to change this from a Type C to a Type B Action. He inquired regarding the implication of this change. Ms. Kolousek said that if reasonable use permits are changed from Type C to Type B actions, there would be no public hearing before a decision is made. She explained that the criteria upon which the decision would be based are defined in such a manner as to allow for administrative decisions, with findings and conclusions that the subject application would comply with the subject criteria. The decision would be appealable to the Hearing Examiner.

Ms. Kolousek referred to **Proposed Amendment 11** and said that the existing code does not specifically mention buffers. It only specifies critical areas. She noted that staff is proposing that **Section 20.30.080** be changed to make it clear that a pre-application meeting is required for both the critical area and its buffer.

Chair Doennebrink referred to **Proposed Amendment 12** which would allow the City to require a qualified professional report. He said it appears that the applicant would be required to pay twice. Ms. Kolousek answered that the City would only require the additional qualified professional review if there are doubts about the applicant's reports, studies and plans. Commissioner Gabbert said this section appears to require an applicant to pay for two professionals to make a decision. He suggested that if the City is going to require a second opinion, they should be required to clearly state the reasons why the second opinion is necessary. The other option is to make the second opinion a standard part of applications that involve wetland issues. The City could roll the expense into the overall cost of the permit application fee.

Commissioner MacCully said he would support making the second opinion standard for all permit applications involving wetlands (**Proposed Amendment 12**). He agreed that there are instances where second opinions are necessary, but he is concerned about placing yet another cost burden on the applicant. Again, Commissioner Gabbert suggested that an additional fee be included in the reasonable use permit application fee to cover the cost of special situations when the City has to call in a consultant to provide a second opinion.

Ms. Kolousek noted that a second opinion is not mandatory. They are currently training the staff to coach applicants, at the pre-application level, to help them understand the seriousness of hiring qualified

professionals and providing adequate reports so that the City can avoid having to ask for a second opinion. It is up to the Commission to make a recommendation about who should pay for the second opinion.

Commissioner Gabbert pointed out that because they live in a litigious society with so many people defending the wetlands, everything is brought into question no matter where it is. Therefore, it should be a given that the City would automatically provide a second opinion, and this should be built into the overall structure of the fees charged across the board on all applications **(Proposed Amendment 12)**.

Commissioner MacCully inquired if the second opinion requirement would apply to any application that is submitted to the City or only to those that involve critical areas. Ms. Kolousek answered that qualified professional judgment is required for all applications. Commissioner MacCully said that for relative standard applications that are signed by civil engineers, the City's civil engineers on staff could effectively provide a second opinion. He questioned if the second opinion requirement is related to situations where the expertise becomes more specialized and it is unlikely the City would have somebody with that level of expertise on staff.

Ms. Kolousek said that the definition for a "qualified professional" is quite broad. There are fields where qualified professionals are licensed (geologists and engineers), and professionals from these fields are not usually questioned. In many cases, the professions necessary to review some issues such as critical areas or tree protection are evolving. The City may ask for more credentials from certain types of professionals. If the City has a doubt that a review was done in the most qualified and professional way, they may ask for a second opinion.

Vice Chair Harris inquired if the City could establish a list of qualified professionals. Mr. Inghram answered that this would require the City to go through the expense of certifying these individuals and then maintaining the list. There would also be issues related to liability—especially on issues of slope stability.

Ms. Kolousek referred to **Proposed Amendment 13**, and explained that the amendment would remove reference to buffer widths since other processes exist for variations from buffer widths.

Chair Doennebrink referred to **Proposed Amendment 14** and requested that staff briefly explain the proposed definition for utilities. Mr. Inghram referred to **Section 20.20,** which provides a definition for the term "utility." The amendment would add a sentence to help define what a utility is. It discusses gas, electric, telecommunications or water companies that are subject to the jurisdiction of the Utilities and Transportation Commission (UTC). This would not include cell phone towers. Mr. Inghram noted that some of the public comments suggested that the second sentence of the definition be changed by adding the word "only" between the words "include" and "those." The Commission needs to decide if they want the definition to be very specific to only include those utilities that are regulated by the UTC or whether they want this sentence to be just an illustration of what a utility is.

Commissioner Sands said that his interpretation of the word "include" means "only include" **(Proposed Amendment 14).** If they want to include other things, they should use the term "include, but not limited

to." This makes it very clear that there may be other types. However, if using the term "include" results in ambiguity, perhaps they should make a change. Mr. Inghram said his interpretation is that the definition of utility only includes the types of utilities that are listed. But if the Commission feels this needs to be clarified, they can change the definition accordingly.

In answer to Commissioner MacCully's question regarding cell phone utilities, Ms. Kolousek said the Development Code provides an entire section that is specifically devoted to wireless telecommunication facilities. She recalled that the Commission previously recommended approval of an ordinance to regulate these facilities, and they are not allowed in single-family residential neighborhoods without a special use permit, even if they would not be located in a critical area.

Commissioner Sands said that the definition of utility states that a private utility includes gas, electric and telecommunications **(Proposed Amendment 14)**. He inquired if a cell phone company would be considered a telecommunication company. Mr. Inghram noted that the definition also states that a utility would only include those companies that are subject to the jurisdiction of the UTC.

Vice Chair Harris suggested that there are plenty of places to locate cell phone towers that do not have critical areas. Therefore, he has no problem with prohibiting their location in critical areas. The remainder of the Commission concurred.

Commissioner Sands asked the staff to provide an explanation of what critical areas and critical area buffers are. He said he looked up the definition of a critical area in the Development Code. It lists numerous examples of critical areas such as streambeds, steep slopes, etc. He questioned what the buffer would be for a property that has both a stream and a steep slope. Mr. Inghram answered that each of the critical areas would have their own buffer. A stream has a very large buffer requirement and may exceed the buffer that is required for the steep slope. Commissioner Sands asked whether or not every single item that is listed in the definition of a critical area has its own buffer. Mr. Inghram answered that would be the case in most situations, but a flood plain, for example, would not typically have a buffer.

Commissioner Sands inquired how the City determines the buffers required for different geological formations. Ms. Kolousek said they will use best available science to determine the buffers, and this will be addressed in the next phase of critical areas amendments.

Ms. Kolousek referred to Pages 14, 15 and 16 **(Section 20.30.350)** of the draft proposal, and noted that the decision criteria has been divided into different subsections **(Proposed Amendment 15)**. She explained that currently the section only includes the purpose statement and a general section of decision criteria. The proposed amendment rewords **Subsection B** to narrow down the criteria in order to avoid situations of constitutional taking. **Subsection C** was added to define reasonable use. She referred to an email the City received in answer to Mr. Casper's letter, which states that the 800 square foot limit is a "rule of thumb number." The Commission could recommend another number as long as they feel the number could be interpreted as the minimum reasonable use based on the taking philosophy and still allow for the due process.

Ms. Kolousek said that **Subsection D (Proposed Amendment 15)** allows for a variation of setbacks. **Subsection E** provides more depth by providing a general priority to the exceptions that might be granted.

Chair Doennebrink referred to **Subsection D**, which states that the Director may reduce setbacks or eliminate landscaping requirements. He noted that the Director would not be required to do this. Mr. Inghram noted that in some situations, reducing the setback or eliminating some of the landscaping requirements might not be preferred in some situations.

Chair Doennebrink asked that staff provide input regarding the comments that were provided for **Subsection B.5.** Mr. Inghram said that this subsection states that if an applicant does something to create the hardship, they shouldn't be allowed the opportunity for reasonable use. While this seems fair, it is not clear under the takings law that just because an applicant may have put themselves into a situation of hardship by their own actions, they would not retain their constitutional right to use their property. Even if the inability to derive reasonable use is the result of the applicant's actions, they still may have some level of constitutional protection. That is why the amendment proposes to eliminate this criterion.

Mr. Sievers further explained that regardless of whether the situation was created by the applicant or his predecessor, he still has a vested right to use the property. If the City tries to take this use away, it would defeat the purpose of having the safety valve, and the City could end up in situations of taking. The Washington Real Property Desk Book that is put out by the Bar Association commented regarding this criteria. It states that, in the past, it has been used to gerrymander platting by placing all of the wetlands and their buffers on just a few lots. He noted that the City's current code would not allow someone to create lots, lot line adjustments or short plats without putting critical areas and their buffers in separate tracts. He agreed that **Subsection B.5** should be deleted because it is subject to argument and could result in a taking.

Chair Doennebrink referred to a comment regarding **Subsection C.3,** related to the 800 square foot limitation for the building footprint. This section states that accessory structures and surfaces such as driveways and sidewalks do not have to be limited except for the statement "but shall be minimized in accordance with the decision criteria." However, there are no references as to what the decision criteria would be or where to find it in the code. Mr. Inghram answered that the decision criteria can be found in **Subsection B**. The Commission suggested that the words "of Subsection B" be added to the end of **Subsection C.3.**

Mr. Inghram said it is difficult to precisely identify what the square footage used for driveways, walkways and accessory structures might be. He noted that the criteria states that the impact to the critical area must be minimized. If this same criterion were applied to the limitation on the footprint for primary permitted structures, staff would be required to make a judgment call for every permit application. Typically, the cost of the accessory structures will limit their size to what is reasonable. But if they don't have a limitation on the footprint size for the primary structures, the City staff would have to make difficult judgment calls.

Commissioner Sands requested clarification regarding the 800 square foot limitation. Ms. Kolousek said that if there is enough space to build a house with a footprint of up to 800 square feet outside of the critical area, then no portion of the footprint would be allowed within the critical area or the buffer.

Commissioner Gabbert said he disagreed with the proposed 800 square foot limitation because there are many variables that need to be considered. In some cases, a whole lot could be considered critical area, including the buffers, and a home with a footprint of up to 800 square feet could be built. He said that limiting a property that has less critical area than another to the same footprint is wrong. Properties with less critical area should be allowed a larger footprint than a lot that is all designated as critical area. He suggested that this limitation be tied more closely with the criteria used for building homes on standard lots by identifying a reduced percentage for the maximum lot coverage allowed.

Ms. Kolousek answered that the City of Bellevue has used this concept and established their maximum lot coverage for properties with critical areas at ten percent. A lot that is 7,200 square feet would be limited to a footprint of 720 square feet. She said the majority of the developable lots with critical areas are almost all single-family lots. Properties with critical areas would not be allowed to accommodate as large a house as properties with non-critical areas. A lot of creativity will be required to design a home that has minimal impact on the critical area while still allowing for reasonable living space.

Mr. Inghram said the staff discussed the option of identifying a lot coverage percentage as they considered the different theoretical scenarios. For smaller lots, a ten percent lot coverage would be considered a reasonable use. But for larger lots, ten percent would go beyond what staff would consider a reasonable use. Since ten percent lot coverage on a smaller lot would be reasonable, staff identified 800 square feet as the limitation for reasonable use.

Commissioner Gabbert noted that in addition to the City's footprint limitation of 800 square feet for a home on lots with critical areas, there could also be deed restrictions that would further limit the size of the structure such as height limitations. For situations that only allow one story above the street level, the City needs to have the ability to allow an applicant to expand the footprint of the structure. If the City were to use a square footage percentage limitation, they could identify both a minimum and maximum footprint to provide some constraints to address larger lots.

Ms. Kolousek explained that a person would not be limited to an 800 square foot footprint if they obtain a setback variance or if they were allowed to average their setbacks. As long as the footprint stays outside the critical areas, it is allowed to expand beyond an 800 square foot footprint. Mr. Inghram added that as soon as any part of the footprint is proposed to go into the critical area, the total size of the footprint would not be allowed to exceed 800 square feet.

Commissioner MacCully inquired regarding the logic of the 800 square foot limitation. If an applicant wants to build a home with a 2,000 square foot footprint and only a small amount of the footprint would be within the critical area, why shouldn't they be allowed to extend into the critical area? He noted that an applicant with property that is nearly all critical area would be allowed to build a structure that extends into the critical area up to 800 square feet. Mr. Inghram explained that within each critical areas standard there are performance criteria for how to protect each as required by State Law.

The standards also provide allowances for certain uses that can occur within buffers. They also allow for buffer averaging and buffer reductions, etc. There are ways to manipulate the buffer so long as the protective function is maintained. If allowing a 2,000 square foot structure to extend into the buffer area would result in a loss of the protective function, it would not be allowed. But if it can be done by buffer averaging or through some type of enhancement plan that maintains the same protective level, the standards may allow for some flexibility. These will be more carefully reviewed during the next phase of the Critical Areas Amendments.

Commissioner MacCully clarified that an applicant would be allowed to push back the house four feet in another area and using buffer averaging. Mr. Inghram said that the way the amendment is written, that would not necessarily be the case. However, it would be possible to include language that would allow this option as part of Phase II.

Ms. Kolousek cautioned that it is important to look at the cumulative impacts associated with a home encroaching into the critical area buffer by a small amount. If there were numerous properties that are allowed to encroach into the buffer, the cumulative impact would be much greater. That is the reason the staff is proposing a standard.

Commissioner MacCully said he understands staff's intent, but he felt that using arbitrary numbers would cause problems. A better option would be to have someone review each situation and make a determination about what is reasonable. Mr. Sievers said that perhaps science should come into play in determining how much buffer is reasonable to achieve a public purpose. In situations where there is already a row of non-conforming houses along the stream on one side, it would not achieve much good to require the houses on the other side of the stream to have 100% buffers. Mr. Sievers said the important thing to consider is what needs to be protected. The protection requirements must be proportionately related to the impact the development would have on the resource. He clarified that, as proposed, the basic rule would be that no development would be allowed to occur in the critical areas unless there is no other reasonable use of the property. It is important to remember that the City does not have to let someone build a home with a 2,000 square foot footprint if it would encroach into the critical area or its buffer.

Ms. Kolousek said an alternative option would be to leave the critical areas reasonable use permit as a quasi-judicial action. Review standards would allow the City staff to continue to review each application and make a finding and decision on a case-by-case basis.

Commissioner MacCully suggested that Mr. Inghram review the slide presentation he provided at the last meeting to further clarify the reasonable critical use permit concept. Mr. Ingrham referred to Diagram A, which illustrates a situation where critical areas exist on the site and an 800-square foot structure is built. In this situation, the applicant would be able to build a much larger footprint because there is plenty of space outside of the critical area. They would not be allowed to place any portion of the footprint within the critical area or its buffer since there is space to place the building on another portion of the property.

Mr. Inghram said that in Diagram B there is insufficient space to build a structure that has a footprint of 800-square feet. Therefore, the structure must extend part way into the protected area. He noted that the structure would be allowed to extend into the critical area even though there is room for the 800-square foot footprint to be located outside of the critical area. Mr. Sievers questioned whether the proposed language would allow that amount of flexibility. He said it seems that the 800-square foot absolute area has to be in a practical or marketable configuration. Commissioner MacCully clarified that the structure identified in Situation B would not be allowed to exceed 800 square feet because a portion of it would be built inside the critical area. Mr. Sievers agreed.

Commissioner Sands inquired if an applicant would be allowed to build a structure with a footprint of 800 square feet with 100 square feet being within the critical areas buffer and then go back and ask for a variance on the setbacks to increase the size of the house. Mr. Sievers answered that while someone might try to do this, it would not be allowed.

Mr. Inghram said that in Diagram C, the entire lot is identified as a critical area. Therefore, the structure's footprint could be no greater than 800 square feet. However, **Subsection D** would allow the Director the flexibility to reduce the setbacks and parking requirements by 50% and eliminate the landscaping requirement so as to allow reasonable use of the property while minimizing the impacts to the critical areas. Ms. Kolousek clarified that if an applicant wants to build a structure with a larger footprint, they could obtain a variance to encroach into the setbacks, but never into the critical areas. If the structure would not be located in a critical area or its buffer, no reasonable use permit would be required.

Commissioner Gabbert pointed out that homes that are built within the critical areas would be limited to a footprint of 800 square feet, and that would include the garage area. Therefore, the main level of the home would only be about 500 square feet. If the applicant is prohibited from building either up because of height restrictions or down because of the water table, he did not feel that a footprint of 800 square feet should be considered a reasonable use of the property

Commissioner Sands referred to **Proposed Amendment 15,** which includes the elimination of **Subsection 20.30.350.B.5**. He noted that several people from the audience have expressed concern about this, and he questioned if the elimination of this subsection would have had an impact on the outcome of the Gaston Litigation. Mr. Sievers said that the Gaston Litigation is an example of how the City could get in trouble if **Subsection 20.30.350.B.5** were to remain as a criteria. He reviewed that in the Gaston Litigation, the argument was that there had been a lot line adjustment, which is one of the City's subdivision procedures, that made the lots more equal but placed one of the lots almost entirely within the buffer area. Commissioner Sands pointed out that the criteria found in **Subsection 20.30.350.B.5** did not allow development to occur on the one lots within the buffer area because the property owner created his own hardship. He questioned if the Gaston developer would have been able to build on that lot if **Subsection 20.30.350.B.5** had already been eliminated. Mr. Sievers said that would all depend on the location and size of the proposed development. If the home's footprint was 800 square feet or less, it would have been allowed on the lot. He noted that the lot line adjustment was finalized without appeal. Therefore, the property owner has a vested right to develop the lot.

Mr. Sievers said that if **Subsection 20.30.350.B.5** is not eliminated, a property owner could not be prevented from exercising his/her vested right to build on the site. This could result in a situation of taking. Chair Doennebrink inquired how the City could prevent someone from subdividing property and creating a lot that is located almost entirely within a critical area. Mr. Sievers said it is important for the City to first have a clear awareness of where the critical areas are located in order to prevent property owners from creating new lots that further encroach into the critical area. However, in the Gaston case, it wouldn't have made any difference because both of the lots he started with would have been consumed by buffers. He could still equalize his lots because it would not create an impact that is not already there for both lots, regardless of the adjustment.

Commissioner Sands clarified that the court basically said that the Gaston situation should not have occurred. He questioned if the Gaston situation would have occurred if **Subsection 20.30.350.B.5** had been eliminated. Mr. Sievers said the criterion not only applies to the applicant, but to the applicant's predecessors, as well. Every lot in the City was created by somebody at some point in time, and many of the lots are totally consumed by buffers. If the criterion in Subsection 20.30.350.B.5 is applied to all these situations, it could be found that all of them were created by either the property owner or one of his predecessors. The result would be numerous situations of taking, and that is why staff is proposing the elimination of the criteria. Commissioner Sands summarized that if **Subsection 20.30.350.B.5** is eliminated, the Gaston Development could occur. Mr. Sievers said he could apply for development on the vested lot.

Chair Doennebrink referred to **Proposed Amendment 17** and questioned why staff is recommending that eventually it would be appropriate to remove the exception clause completely. Mr. Inghram explained that if the critical areas standards are fully sufficient and fully protect the critical areas, there is no need to conduct a SEPA review simply for development that is on the same site as a critical area. The SEPA review would be in addition to the critical areas review.

Chair Doennebrink referred to Dennis Casper's point regarding someone wanting to improve or restore the buffer as part of their overall development project. Would **Proposed Amendment 15** prevent this from taking place? Mr. Inghram said that, typically, enhancement activities would be an allowed use within a critical area.

Ms. Kolousek pointed out that the remainder of the amendments **(Proposed Amendments 18 through 32)** are items that were moved from Chapter 20.80 to Chapter 20.30. The Commission discussed the changes that were made to these sections as part of their discussion related to the criteria.

Chair Doennebrink requested clarification regarding the current **Section 20.80.190** (Page 35), which staff is proposing for deletion. Ms. Kolousek said the purpose of this section was to provide more defined buffer standards. This whole section would be deleted to tighten up the buffer section because the proposed amendments would not allow buffers to be modified. In addition, encroachments into the buffer area would only be allowed based on the reasonable use criteria.

Commissioner MacCully clarified that deleting **Section 20.80.190** would lead one to believe that the City is not interested in modifying buffers. However, if a stream moves, the buffer automatically moves with the stream. How would someone go about modifying a buffer in these situations if there is no outlined process? Mr. Inghram said the buffer would be moved simply by the change of events. Commissioner MacCully inquired who would make this decision. Mr. Inghram said a property owner would first submit an application to build, along with documentation from a qualified professional that the stream has moved. Commissioner MacCully inquired if the City would change their critical areas map to identify the correct location of the critical area for this site only or would they examine and make changes to the other sites in the area, as well. Mr. Stewart said the City would handle their adjustments to the critical areas map the same way the Army Corps of Engineers handles their adjustments to the flood insurance rate maps. If better information than was originally used to draw the maps is provided, the staff will evaluate the information and make a determination as to whether the area should be modified or not.

Ms. Kolousek referred to **Section 20.80.190**, which is recommended for elimination. From an administrative point of view, staff has not used this section because nobody understood it. Because there is a reasonable use section in the code, this section is not necessary.

Ms. Kolousek suggested that the Commission identify all of the proposed amendments they feel they could adopt without further discussion. Chair Doennebrink agreed and suggested that they begin the process by identifying the proposed amendments that have raised the most significant concerns.

Commissioner Gabbert suggested that further discussion is needed regarding **Proposed Amendments 12 and 15**. Commissioner MacCully agreed, and also questioned how **Proposed Amendments 9 and 10** relate to **Proposed Amendment 15.** Ms. Kolousek agreed that these amendments are interrelated.

Commissioner Sands said he is concerned about a few of the items that are proposed for elimination but do not appear on the list. He said he would like to discuss **Subsection 20.30.350.B.5** further, as well.

COMMISSIONER SANDS MOVED THAT THE COMMISSION RECOMMEND ADOPTION OF ALL OF THE **PROPOSED AMENDMENTS 1 THROUGH 32** AS WRITTEN, EXCEPT **PROPOSED AMENDMENTS 9, 10, 12 AND 15.** COMMISSIONER GABBERT SECONDED THE MOTION. THE MOTION CARRIED 6-0.

Ms. Markle reminded the Commission that if they want to continue their discussions on **Proposed Amendments 9, 10, 12 and 15** to the next meeting, they will have to use their time efficiently. She noted that there are already three items on the next agenda. In addition, the May agendas are also full. If they don't get through all of their business they will have to call for extra meetings in both April and May. The Commission also has their retreat in May.

## 8. PUBLIC COMMENTS

**Pat Crawford**, 2326 North 155th Street, said she is very frustrated because the Commission does not seem to be receiving an overall view of what is being proposed for the critical areas ordinance. They are talking about sensitive areas at the same time they are talking about the needs of the developers to exploit the sensitive areas. She reminded the Commission that the site is what should dictate reasonable use. A blanket number for reasonable use is not appropriate and will not hold up in court.

Ms. Crawford suggested that the code changes are being proposed, in the first place, because of recent court cases involving the City. Specific things are being deleted as a result of the City's court losses. She reminded the Commission that at the last meeting, Commissioner McClelland inquired regarding the public's opinion related to critical areas. Ms. Crawford said that both the Democrats and the Republicans agree that the proposed amendments are not good. She provided a copy of a resolution from State Representative Maralyn Chase indicating the 32nd District Democrats' view on the issue. This was identified as Exhibit 1. As far as reasonable use permits being more difficult to obtain and critical areas special use permit being harder to get than reasonable use permits, Ms. Crawford said this would be dependent on the site. Preventing property owners who create their own situations from obtaining an exemption provides protection for everyone.

Ms. Crawford asked that the Commissioners read the code, which is already adequate. The proposed amendments do not provide clarity. In fact, they make it more confusing. The code is clear, is a usable tool, and the City spent a lot of money to create it. When Evergreen School was developed, the code was reviewed, and they built according to the code requirements. As a result, everyone was happy. The code is fine the way it is. Lastly, she urged that the overlay chapter not be eliminated. She said that she would be delighted to explain the City's Development Code to the Commission, because she does not feel they clearly understand it.

**Tim Crawford**, 2326 North 155th Street, provided a copy of an article that summarized a letter that was written by George Daher stating the 32nd District's Republican viewpoint on the Thornton Creek issue. It was identified as Exhibit 2. Mr. Crawford said he is surprised that his wife knows the code better than the City Attorney. He said he is disappointed that the Commission just voted to amend sections of the code after hearing from the staff that the buffer requirement section was never used. He emphasized that this section was used extensively in court.

Mr. Crawford said the proposed amendments will not stand in court, and they will be challenging a lot of the changes. He reiterated that while the Commission has listened to the public, it appears that they would like to have less exposure from the public. The citizens will take action in the upcoming elections. He said that he attended a City Council Meeting 3½ years ago, pointed at Tim Stewart and told the Mayor that a change was needed. The proposed amendments are the result of 3½ years of effort on behalf of his wife. While they have changed the ordinance, they have ended up deleting the protections and raped, ruined and scarred Thornton Creek. He takes offense to this action.

**Walt Hagen**, 711 North 193rd Street, said that because the amendments are separated from the remainder of the code, it is difficult for anyone to review them in context of the entire code. The Commissioners have asked many questions about the code because the other parts of the code were not provided. These parts are necessary in order for the Commissioners to make their own determination rather than taking the word of the staff or their interpretation of the changes.

## 9. UNFINISHED BUSINESS

There was no new business scheduled on the agenda.

## 10. NEW BUSINESS

### a. Planning Commission Elections

Ms. Markle referred the Commission to the memorandum regarding the election procedures and encouraged the Commission to also use their amended bylaws to run the election.

Ms. Curry, the Commission Clerk, opened nominations for the position of Commission Chair.

COMMISSIONER GABBERT NOMINATED BRIAN DOENNEBRINK AS THE COMMISSION CHAIR.

COMMISSIONER GABBERT MOVED THAT NOMINATIONS FOR CHAIR CEASE. COMMISSIONER SANDS SECONDED THE MOTION.

Ms. Curry closed the nominations for Commission Chair.

THE COMMISSION UNANIMOUSLY ELECTED BRIAN DOENNEBRINK AS THE COMMISSION CHAIR.

Chair Doennebrink opened the nominations for Vice Chair of the Commission.

COMMISSIONER MACCULLY NOMINATED DAVID HARRIS AS THE VICE CHAIR OF THE COMMISSION.

COMMISSIONER GABBERT MOVED THAT NOMINATIONS FOR VICE CHAIR CEASE. COMMISSIONER SANDS SECONDED THE MOTION.

Chair Doennebrink closed the nominations for Commission Vice Chair.

THE COMMISSION UNANIMOUSLY ELECTED DAVID HARRIS AS THE VICE CHAIR OF THE COMMISSION.

## 11. AGENDA FOR NEXT MEETING

Ms. Markle reminded the Commission that the agenda for the next meeting is very full because there are a lot of complicated items coming in May that will require decisions to be made on a timeline. The items on the April 17th Agenda include: King County Transfer Station Master Plan, Central Shoreline Comprehensive Plan Amendments, and Sky Nursery Street Vacation. Staff will report on each item to introduce the Commission to the topics. The Commission will have an opportunity to ask a lot of questions so that when the issues are brought before them in May a lot of the questions will have already been answered.

Ms. Markle reviewed that the King County Transfer Station Master Plan application will technically be completed this week, and staff will begin the advertising process. An open house is scheduled for the May 1st meeting. It will start at 5:00 p.m. and will be followed by the regular meeting at 7:00.

Mr. Stewart reminded the Commission that the Central Shoreline Comprehensive Plan has been in the works for well over a year. One of the identified needs is the establishment of the ultimate right-of-way needs for the Aurora Corridor through the central Shoreline area. One of the exhibits for the Central Shoreline Master Plan presentation will be a detail showing a proposal for the ultimate right-of-way. This information will be provided to the City Council shortly, and staff will provide a brief presentation to the Planning Commission on April 17th in a workshop setting in preparation for the formal public hearing on May 15th.

Ms. Markle advised that further Commission discussion regarding the critical areas ordinance amendments that were not acted on tonight would be scheduled as the first item of business at the April 17 meeting. However, she cautioned that they need to stay on a strict timeline in order to get through all the items scheduled on the agenda. Otherwise, a special meeting will be required in late April.

Mr. Stewart provided an update on the status of the letter the City received from the Washington State Department of Fish and Wildlife, which was referenced at the beginning of the meeting by Mr. Crawford. The staff is seriously reviewing the letter, including discussions with Fish and Wildlife about the data and science they utilized to reach the conclusions expressed in the letter. Once staff has had an opportunity to clarify the due diligence and science used by the Department of Fish and Wildlife, they will be able to work with the City's consultants to determine whether or not the draft stream inventory should be adjusted. Once this work has been done on the staff level, they will come before the Commission with their findings.

Commissioner Sands inquired if the City has received any public comments concerning any of the other streams in the community. Or are the only complaints and comments related to just a very specific area of Thornton Creek? Mr. Stewart said there have been other issues raised regarding the other creeks in the City, but the most contentious area has been Thornton Creek.

Vice Chair Harris inquired if there are any flood plains in Shoreline. Mr. Stewart said there are no officially designated flood plains mapped by the Federal Flood Insurance Program, but there are areas within the City that flood frequently.

Chair Doennebrink noted that the amendments to the cottage housing regulations were adopted by a 3-1 vote of the City Council.

Mr. Stewart advised that a staff report is moving forward with a recommendation to construct two gateways this year, one at the Ponies site and the other at 175th southeast of Interstate 5.

**12. ADJOURNMENT**

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

Brian Doennebrink
Chair, Planning Commission

Lanie Curry
Clerk, Planning Commission

DRAFT These Minutes Subject to May 2 Approval

# CITY OF SHORELINE

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

April 17, 2003 Shoreline Conference Center
7:00 P.M. Board Room

**PRESENT**
Chair Doennebrink
Vice Chair Harris
Commissioner Doering
Commissioner Kuboi
Commissioner Sands
Commissioner Piro (arrived at 7:15 p.m.)
Commissioner Gabbert

**STAFF PRESENT**
Tim Stewart, Director, Planning & Development Services
Anna Kolousek, Assistant Director, Planning & Dev. Services
Rachael Markle-Oleson, Planning Manager, Planning & Dev. Services
Ian Sievers, City Attorney
Paul Ingrahm, Consultant
Lanie Curry, Planning Commission Clerk

**ABSENT**
Commissioner McClelland
Commissioner MacCully

### 1. CALL TO ORDER

Chair Doennebrink who presided called the regular meeting to order at 7:00 p.m.

### 2. ROLL CALL

Upon roll call by the Commission Clerk, the following Commissioners were present: Chair Doennebrink, Vice Chair Harris, Commissioners Doering, Kuboi, Gabbert and Sands. Commissioner Piro arrived at 7:15 p.m., and Commissioners McClelland and MacCully were excused.

### 3. APPROVAL OF AGENDA

THE COMMISSION APPROVED THE AGENDA AS PROPOSED.

The Commission agreed that Agenda Item 5 should be changed to "General Public Comments."

## 4. APPROVAL OF MINUTES

THE COMMISSION UNANIMOUSLY ACCEPTED THE MINUTES OF APRIL 3, 2003 AS AMENDED.

## 5. PUBLIC COMMENT

**Janet Way**, 940 NE 147th Street, said that she represents the Thornton Creek Legal Defense Fund and the Paramount Park Neighborhood Group. She referred to the critical areas amendments that are currently under consideration by the Commission. She pointed out that the critical areas special use permit, which the Board is now in the process of changing, was changed previously from when it was in accordance with the County's code (just for utilities). She said it appears that the interim change was done for the benefit of the Aegis Project, and now it is being changed back. She said the public is concerned that the rules appear to change in order to benefit developers.

Ms. Way said that the City Council has decided to remove public comments from their workshop agendas, and it appears the pattern is to eventually eliminate the public's ability to provide comments. She said she sees this as an erosion of public interest. She said she appreciates that the Commission allows an opportunity for the public to comment at each of their meetings, since public participation is really vital to a democracy.

**DInnis Casper**, 10545 Greenwood Ave North, said he is concerned about the 800 square foot limitation for development in critical areas. While he applauds the City for attempting to be more consistent with the Growth Management Act and environmental protection, each situation should be considered on a case-by-case basis. If protection can be provided, then a developer should be allowed more than an 800 square foot footprint. If mitigation cannot be done, then more protection should be required in addition to the smaller footprint.

Chair Doennebrink inquired if the rules related to the critical areas special use permit were changed previously, as noted by Ms. Way. Ms. Kolousek explained that when the Shoreline Development Code was created, consultants advised the staff that the change would be procedurally acceptable, and the change was done as part of Phase II of the Development Code process. She said she does not believe the consultants had any connection to developers or any kind of discrete purposes. She further explained that, at the time, the King County code was considered very obsolete, and the rules were not conducive for urbanized areas.

## 6. REPORTS OF COMMISSIONERS

There were no reports provided by the Commissioners during this portion of the meeting.

## 7. STAFF REPORTS

### a. Continuation of the Deliberation on the Procedural Amendments to the Critical Areas Ordinance

Chair Doennebrink recalled that at the last meeting, the Commission took action to recommend approval to the City Council of most of the proposed amendments, with the exception of **Proposed Amendments 9, 10, 12 and 15.** He noted that at the last meeting, staff recommended that **Proposed Amendment 12** be considered prior to **Proposed Amendment 9**.

Ms. Kolousek suggested that, as the Commission continues their deliberations on the procedural amendments to the Critical Areas Ordinance, they should consolidate **Proposed Amendments 9 and 15.** She also suggested that they discuss **Proposed Amendment 15** first because the result of this discussion will impact **Proposed Amendment 9.**

Commissioner Gabbert expressed his concern that the bulk and scale of new development should be in character with the adjacent properties, with sensitivity to the critical areas. He said he does not support a blanket 800-square-foot limitation because it would not allow development that is comparable to the surrounding properties. He said he could support Option 2 on Page 29 of the Staff Report with some changes. He recommended that lot coverage be a minimum of 800 square feet and a maximum of 1,800 square feet, including garages and other outbuildings. However, if land covenants restrict the height of a structure to 16-feet or less and pitched roofs are used, the maximum lot coverage should be allowed to increase by 20 percent, but not greater than 75 percent of the average lot coverage of properties within 500 feet of the subject property.

Commissioner Sands suggested that reasonable use permits be maintained as Type C Actions. This would allow the Hearing Examiner to review each on an individual basis and make a determination as to what the reasonable use might be. He said it seems to him that this would be a lot easier than coming up with some sort of sliding scale that will never work for all situations. In addition, he reminded the Commission that the reasonable use provisions would only apply to properties that have critical areas. He pointed out that there are not a significant number of properties in Shoreline that would fall within this category. Therefore, it would be a lot easier to consider each on a case-by-case basis. Ms. Kolousek said that Commissioner Sands' recommendation is comparable to staff's Proposed Option 3.

Commissioner Piro said that if the main purpose of Commissioner Gabbert's proposal is to address the issue of compatibility to adjacent uses, the issue could be addressed by including additional language to as one of the decision criteria in Option 3. Commissioner Gabbert said he is in favor of Commissioner Sands' proposal, if they add provisions related to compatibility with adjacent properties and height limitations to address the concerns he stated earlier.

Commissioner Kuboi requested that staff provide a brief explanation as to what triggered the evaluation of the critical areas ordinance. Mr. Stewart explained that the driving force is the State mandates that the City reviews and updates their critical areas ordinance.

Ms. Kolousek added that the staff is moving forward with a review of the procedures first because that is the type of working model that was used successfully for the Development Code review. It allows for a more manageable process so that the Commission can then focus on the issues of substance. She explained that the Development Code has one section that is designated for procedures only. However, at the time they worked on the Development Code, the critical areas element was not yet required, and that is why the procedures were included in the critical areas ordinance.

Commissioner Kuboi said his interpretation of the intent of the proposed amendments is to make the process as objective as possible by taking out much of the discretion to make it more clear. By making the process more "cookie cutter" they can then justify making it a Type B Action instead of a Type C Action. He suggested that the decision comes down to whether or not the Commission believes they can create a decision process that is clear enough, fair enough and objective enough to make it a Type B Action as opposed to the more discretionary Type C Action. However, if the Commission believes the process needs to be discretionary, they should leave it as a Type C Action.

Commissioner Kuboi inquired if there are reasons why staff feels the reasonable use process should be more standardized as opposed to making it discretionary. Mr. Sievers answered that some of the procedures that staff is recommending for removal are redundant and ambiguous criteria. The intent is to make the criteria easier for the developers and the staff to apply so that there is some certainty and consistency in processing reasonable use permits. The existing criteria for the reasonable use permit are particularly vague, and until recently, the standard and formula for defining reasonable use has been a real quagmire. The City has had some recent experience where the reasonable use permit criteria did not clearly identify what the reasonable use was, and the case had to be taken to the Hearing Examiner. Because the Hearing Examiner does not have any delegated criteria, he is left to decide what he thinks is reasonable based on some complex factors that can be argued both ways by attorneys. Often parties or appellants disagree with the Hearing Examiner and end up appealing his decision, and the process goes on and on.

Mr. Sievers said Shoreline has a developed a pattern of lot development and they have now finished their wetlands and stream inventory. Therefore, they know where these situations exist and they typically do not involve the very large lots. Now the City can be specific and confident that when someone challenges the constitutional validity of reasonable use, they will have greater success in being able to defend a very specific formula. Because of the groundwork that has been laid, it is now appropriate for the City to put criteria in the ordinance so that developers know what they can do and staff can process the applications. The Hearing Examiner has enough to do, and his time is expensive. It is also expensive for the City Attorney's office to defend cases or present cases to the Hearing Examiner.

Commissioner Kuboi said it sounds like regardless of who is granted the decision authority, whether it is a Type B or Type C Action, the City still needs to develop decision criteria. Mr. Sievers said the goal is to develop decision criteria in the reasonable use ordinance that are easy to follow. The other option is to remove the criteria and let the courts figure out what the reasonable use should be.

Commissioner Kuboi said he is sensing that some Commissioners would like to keep reasonable use permits as Type C Actions because the situations are very different from each other and it is difficult to come up with criteria. However, he agreed that the issue of criteria would come back at some point if the Commission does not make their best effort to resolve it now. Mr. Sievers noted that, as proposed, the criteria are very specific and objective and easy for the staff to use. He said he does not object to expanding the formula or changing the number, as long as the intent of the amendment does not change.

Commissioner Sands inquired if an applicant would have the ability to appeal both Type B and Type C Actions to the courts. Mr. Sievers answered affirmatively. Commissioner Sands said it seems that whether there are criteria or not, the City would receive the same types of appeals. Although, it may be a little bit harder for an appellant to win if the City has very specific criteria, he suggested that leaving the criteria more vague might actually be more useful to eliminate some of the appeals.

As an example, Mr. Sievers said the City allows appeals to Superior Court on the building permit criteria. However, the City does not receive any of these types of appeals because the criteria are very precise. He said that he would expect an appeal almost every time on reasonable use permits because there are funded advocacy groups on both sides. Commissioner Sands said he understands why building codes can be very explicit and why people don't appeal building permits. But a reasonable use permit provides the last chance for a person to use his/her property if it is in a critical area. He agreed that there would always be someone on both sides. If they create decision criteria similar to what they already have, with the addition of compatibility to adjacent properties, he felt that would be as good as they would ever get. The criteria would give whoever is making the decision sufficient guidelines to be able to make a determination as to what is reasonable for each particular property.

Mr. Stewart suggested that staff briefly review some of the options that are listed on Page 29 of the staff report, specifically focusing in on Option 3, which appears to be getting a lot of support from the Commission.

Ms. Kolousek explained that Option 1 identifies the draft **Proposed Amendment 15** dated February 29, 2003. Option 2 would change the reasonable use criteria by utilizing some maximum and minimum numbers and including some limitations on percentages of lot coverage. Using Option 2, a 10,000 square foot lot would allow a building footprint of up to 1,000 square feet, which is ten percent. However, a lot smaller would be limited to 800 square feet. The proposal would allow the director to move the footprint by adjusting the setbacks without using the variance process. Option 3 seems to be the most comfortable choice for the Commission, but they should take into account that there are no real criteria that can be objectively applied to the lots. Option 3 would require the Hearing Examiner to review each reasonable use application on a case-by-case basis and provide findings of fact, findings and conclusions and a decision as to what the reasonable use for the specific lot would be. Option 4 would be similar to Option 3 if it were left as a Type C Action for the Hearing Examiner to review. However, there would be some guidance as to what the reasonable use would be.

Mr. Stewart briefly reviewed how Option 3 could be applied to the ordinance. He referred the Commission to the language on Page 28 of the Staff Report. The title would be changed to indicate that it would be a Type C rather than a Type B Action.

The only sections that would remain would be Section A (Purpose) and Section B (Decision Criteria). All of the other sections would be removed. Section B would provide the entire criteria for issuing a reasonable use permit. He noted that this would be simple to apply and would be fairly close to the standard that exists today. Option 3 would allow the City, as time passes, to review the decisions of both the Hearing Examiner and the courts, apply the decisions against what is actually being developed in the City, and then make a determination as to whether or not they want to visit some relational standard at some point in the future. He said staff would be comfortable with Option 3. Ms. Kolousek added that if the Commission accepts Option 3, there would no longer be a need to discuss **Proposed Amendment 9.**

Vice Chair Harris said his understanding of Commissioner Sands' proposal was to use Option 3, but with the availability of taking it to the Hearing Examiner if a property owner wanted to go beyond what is allowed by the criteria. In other words, reasonable use applications that meet the 800 square foot criteria would be Type B Actions. But if an applicant wants to go beyond that, he would have the option of going to the Hearing Examiner. Commissioner Sands said that was not his suggestion. His suggestion was to leave it as a Type C Action so that each situation could be reviewed on a site-by-site basis.

Commissioner Doering said she is in favor of Commissioner Sands' proposal, but they need to add additional criteria related to consistency with surrounding development. The Commission agreed that this should be added as an additional criterion in Subsection B. Commissioner Sands said he would not be opposed to adding some of the language from Subsections C and D as criteria under Subsection B. This could help provide more direction to the Hearing Examiner.

Commissioner Kuboi said that if there were a "hard and fast regulation" of 800 feet, the City would probably get legal challenges. The other scenario that allows for discretionary decisions would result in legal challenges, as well, because applicants would compare their situation to other reasonable use decisions that have been made by the Hearing Examiner. He inquired if one would cause more legal challenge than the other. Mr. Sievers said the Hearing Examiner would create findings that are site specific to justify variations in his decisions. All the zoning codes are supposed to be legislative and controlled by the Council. When the Council delegates decision making, it is supposed to be done based on specific criteria. Someone may file an appeal because there are no standards in place. Therefore, the more standards that are provided, the better the City will fair on future appeals. He said, however, that he does not expect a significant increase in the number of appeals regardless of which option is used.

Commissioner Gabbert suggested that Subsection C should be eliminated. Commissioner Sands agreed, and said he would like the heading of the section to be changed to indicate a Type C rather than a Type B Action, and then Subsections A, B, D and E could remain as written. It was noted that in Subsection D, all references to Director should actually be changed to "Decision Maker."

Commissioner Gabbert suggested that compatibility with surrounding properties should be added as Criteria 5 in Subsection B. Commissioner Sands pointed out that in order to be granted a reasonable use permit, an applicant must meet all of the criteria identified in Subsection B.

He said he is not convinced that a criterion related to compatibility with surrounding properties belongs as part of this subsection. He suggested it would be better to put this in Subsections D or E as something the Hearing Examiner should consider when making a determination.

Mr. Stewart suggested that perhaps compatibility with surrounding properties would be best addressed in the purpose section. He suggested that Subsection A be changed to read: "The purpose of the reasonable use permit is to allow development and use of private property, consistent with the character of the surrounding neighborhoods, when the strict application of the critical area standards would otherwise deny all reasonable use of the property."

Ms. Kolousek said another option would be to address compatibility in Subsection D, which allows the decision maker to reduce the setbacks by up to 50 percent in order to minimize the impacts on critical areas. Adding a statement regarding compatibility with surrounding properties in this subsection would be appropriate because it would still require that the impacts to the critical areas be minimized. For example, if adjacent properties do not have critical areas, compatibility may not be the overriding criteria. That is why she would not state it in the purpose section.

Commissioner Kuboi inquired if there would be any sort of definition of what a reasonable use is if Subsection C is deleted. He said it appears that the definition migrates. He has heard statements in the past that reasonable use can be defined as a minimum amount of use to meet a threshold of what is deemed reasonable. He is now hearing a recommendation to tie reasonable use to the surrounding built environment, which moves away from the minimum threshold concept. He said his understanding is that reasonable use does not necessarily mean the maximum use or use consistent with the magnitude of the use on adjacent properties. It is more the reasonable lower threshold that can be constituted as enough.

Ms. Kolousek said she doesn't think this section needs to be analyzed in such detail that reasonable needs to be defined as a threshold. She pointed out that Section 20.30.350 is titled "Reasonable Use Permit." The purpose and criteria are specified, which lead to a determination of what is reasonable on a case-by-case basis. She advised that a firm threshold for critical areas should not be established. Instead, criteria should be established which can become the basis for a determination on each specific case.

Commissioner Kuboi said he is not looking for anything objective in terms of a definition, but just the philosophy that when the term reasonable is used, they are not implying the concept of maximizing the use. Rather, the law supports the City allowing "just enough use." Ms. Kolousek suggested that this concern is addressed in Subsection B.3. Commissioner Kuboi referred to Commissioner Gabbert's proposal that would somehow tie reasonable use to the adjacent properties. For properties with huge adjacent properties, the implication is that the property owner would have the right to develop something equally as large. He said this goes against the environmental consideration of minimizing the impacts to the critical areas. Ms. Kolousek said she does not believe Commissioner Kuboi's interpretation would result from the cumulative application of the criteria. One criterion cannot be considered outside of the rest. All of the criteria must be considered cumulatively on a site-specific basis.

COMMISSIONER SANDS MOVED THAT THE COMMISSION RECOMMEND APPROVAL OF **PROPOSED AMENDMENT 15** (Section 20.30.350) WITH THE FOLLOWING MODIFICATIONS:

- CHANGE THE SECTION TITLE TO INDICATE THAT IT WOULD BE A TYPE C ACTION RATHER THAN A TYPE B ACTION.
- ELIMINATE SUBSECTION 20.30.350.C.
- CHANGE SUBSECTION 20.30.350.D TO SUBSECTION 20.30.350.C.
- CHANGE ALL REFERENCES TO "DIRECTOR" TO "DECISION MAKER."
- ADD SOME LANGUAGE RELATED TO COMPATIBILITY WITH SURROUNDING PROPERTIES TO NEW SUBSECTION 20.30.350.C.
- CHANGE SUBSECTION 20.30.350.E TO SUBSECTION 20.30.350.D

COMMISSIONER GABBERT SECONDED THE MOTION.

Mr. Stewart said that after further discussion, he and the City Attorney concur that the language related to neighborhood character and scale would best fit under the decision criteria as Item 5. He recommended the following language: "The application shall be consistent with the character and scale of neighboring developments." Commissioner Sands said he believes that inserting the proposed language as Item 5 would imply that all development in critical areas should be consistent with the character and scale of neighboring developments. He said he would agree to language stating that the property owner must minimize impacts to the critical areas and cannot exceed what is in the surrounding area. He said that because the criteria listed in Subsection B are absolute requirements, he would be opposed to adding language related to compatibility in this section. It would be better to place this language in the development standard section to allow the Hearing Examiner to make the determination.

Mr. Stewart suggested that the last sentence in New Subsection C be changed to read: "Such reductions shall be the minimum amount necessary to allow for reasonable use of the property, considering the character and scale of neighboring development."

BOTH COMMISSIONER SANDS AND COMMISSIONER GABBERT (THE MAKER AND SECONDER OF THE MOTION) AGREED THAT THE LAST SENTENCE OF NEW SUBSECTION 20.30.350.C SHOULD BE CHANGED TO READ: "SUCH REDUCTIONS SHALL BE THE MINIMUM AMOUNT NECESSARY TO ALLOW FOR REASONABLE USE OF THE PROPERTY, CONSIDERING THE CHARACTER AND SCALE OF THE NEIGHBORING DEVELOPMENT."

THE MOTION CARRIED UNANIMOUSLY.

Chair Doennebrink noted that as a result of the Commission's motion related to **Proposed Amendment 15**, it is no longer necessary for the Commission to discuss **Proposed Amendment 9.**

Chair Doennebrink referred the Commission to **Proposed Amendment 10**, which would change the decision maker for the special use permit from the City Council to the Hearing Examiner. Mr. Stewart reminded the Commission that the special use permit has to do with utilities only.

COMMISSIONER DOERING MOVED THAT THE COMMISSION RECOMMEND APPROVAL OF **PROPOSED AMENDMENT 10** USING OPTION 1 (THE HEARING EXAMINER BEING THE DECISION MAKER). COMMISSIONER SANDS SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

It was noted that as a result to the Commission's recommendation regarding **Proposed Amendment 15,** Item 5 on Table 20.30.060 would be added back in. It was also noted that the word "approval" should be replaced with "permit."

Chair Doennebrink referred to **Proposed Amendment 12,** which would allow the City the discretion, at the applicant's expense, of retaining a qualified professional to review and confirm the applicant's reports, studies and plans.

Commissioner Kuboi recalled that at the last meeting the Commission discussed the need to articulate the general circumstances by which the City would request the second professional opinion. It was discussed that this would only be done if something came to bear that would indicate that there was contrary information.

Ms. Kolousek said that the Development Code (Section 20.80.100.D) already allows the City to require a second opinion from a qualified professional at the applicant's expense. The wording from Section 20.80.100.D was moved from the critical areas section to the general section as part of the City's attempt to consolidate the procedures into one section. She explained that the second opinion would only be necessary if issues are raised by other qualified professionals during the public process which are contradictory to the information provided by the applicant's professional. If the director believes there is a doubt, they can require that the issue be resolved by an unbiased, qualified professional.

Commissioner Doering inquired if there is a State agency or organization that licenses these individuals on behalf of the State. If so, they could require that qualified professionals must be licensed by the State. Mr. Ingrahm answered that in some areas of expertise there are licensing agencies, and in others there are not. There are no State licensing requirements for arborists. While there is wetlands certification, it is not a State recognized licensing program. There is licensing for hydro-geologists and geological engineers.

Commissioner Gabbert said that wetlands biology is not an exact science, and there is a lot of judgment involved. It is typical for wetlands biologists to disagree. He said he objects to **Proposed Amendment 12** because the proponent of the project would be required to pay for the second opinion, even though he/she has already hired a wetlands consultant. He suggested that, instead, the City should build a contingency fund into its fees to cover situations where a second opinion is necessary. This could be spread across all the fees charged for people making application for a building permit, which would not be a significant cost added to each of the individual permits.

Ms. Kolousek explained that since significant changes were made to the City's review process, the staff is concentrating their effort on explaining to the applicants, at a pre-application meeting, exactly what submittals are necessary in order for the application be considered complete.

At the pre-application meeting, the staff carefully explains what is required for the qualified professional review. However, the language in **Proposed Amendment 12** acts as an insurance valve for the City. She said that, even after the pre-application meetings, applicants sometimes obtain the services of less experienced professionals. The resulting reports may not be right. The City needs to have the ability to ask for a second opinion in these situations, and she did not feel it would be appropriate to make everyone else pay more for their permit to cover the cost of one person's inadequate report.

Mr. Stewart provided an example of when a third party review was required by the City. He said the Innis Arden Association presented a plan to do extensive cutting in the grouse reserve. Their professional had suggested that most of the vegetation be removed and that extensive replanting of small trees and such be made. The City was not satisfied with that report so they obtained the services of a third party to review the plan. Eventually, the association reconsidered their plan and changed the proposal significantly as a result of the third party review. The applicant paid for the second review in this situation.

Commissioner Kuboi said his sense is that the Commission is not opposed to allowing the City to have the discretion for a third party review. The concern seems to be that the City could abuse the provision because the applicant would be required to pay the cost. He asked what triggered the City's desire to have a third party review of the Innis Arden plan. Mr. Stewart answered that after staff reviewed the application, they immediately became concerned about the extensive nature of the proposal that was supported by a qualified professional. Commissioner Kuboi clarified that the issue of credentialing is not an airtight basis for determining that a second opinion would not be necessary. Mr. Stewart explained that if a registered land surveyor submits a plan to the City with a stamp on it, the City would not do a third party review. The same is true for a registered engineer. But some of the credentials for other disciplines are much less clear, and these are usually the cases where a third-party review is required.

Had there been a pre-application meeting for the Innis Arden proposal, Commissioner Kuboi inquired if it would have been possible for the staff to articulate some level of expectation or credentialing that would have avoided the concern. Mr. Stewart answered negatively. Mr. Sievers further explained that in some disciplines there have been no objective criteria established. He said that some developers have suggested that they just give the City the money to pay for the required studies for properties with wetlands. That way, they would only have to pay once. This could be one option the Commission could consider.

Commissioner Doering suggested that perhaps the proponent and opponent should both share in the cost of the third-party review. Mr. Stewart said that if applicants were to pay the City to have City consultants do the work, the downside is that it would not be as economical as a developer could do by retaining their own consultant.

Ms. Kolousek said the City is really thorough in the pre-application meetings because they are learning all of the little things that come up later in the review process. The pre-application improvement process will continue to evolve.

It is important that a permit application does not have unnecessary delays during the review process, but it is also important that the information staff receives from the developer is accurate. It takes a lot of effort to convey this to the developers.

Vice Chair Harris said that because this provision is already in the code, and he does not believe staff has abused the provision in the past, he would support the proposed amendment as written by staff.

VICE CHAIR HARRIS MOVED THAT THE COMMISSION RECOMMEND APPROVAL OF **PROPOSED AMENDMENT 12** AS WRITTEN BY STAFF. COMMISSIONER PIRO SECONDED THE MOTION. THE MOTION CARRIED 6-1, WITH COMMISSIONER DOERING VOTING IN OPPOSITION.

**b. Workshop to Discuss Upcoming Projects**

- **King County Transfer Station Master Plan**

Ms. Markle said that one exciting project that will be coming before the Commission in May is the King County Transfer Station Master Plan. This will be the City's first master plan to come through the process. She referred to the memorandum that was sent to each of the Commissioners regarding the Master Plan. She noted that there was one change to the proposed schedule. The open house is scheduled for May 1 as the regular Commission Meeting, but the Commission will not be asked to make a recommendation that night. The recommendation will come later at the first meeting in June or possibly a special meeting in May. She explained that the application needs a little bit more work.

Ms. Markle referred the Commission to the draft site plan that was provided to each of the Commissioners. She advised that King County has been meeting with a citizen advisory committee, and they have held three open houses to obtain public input. The preferred alternative is a result of those meetings. She said the Commission would also be receiving information regarding what the essence of a master plan is. It is not only the future design for the site, but will also become a chapter in the Development Code that identifies the standards that will make the project appropriate for the neighborhood.

Ms. Markle explained that the reason this master plan is necessary is that the Comprehensive Plan identifies the transfer station as an essential public facility, with zoning of R-6. Because a transfer station is obviously not a residential use, special standards need to be in place in order for the transfer station to be compatible with the surrounding properties. The City of Shoreline and King County staff are working on the draft development guidelines together.

Chair Doennebrink recalled that this issue was presented to the City Council about a month ago, and it seemed that King County went to great lengths to meet with the citizens—especially those surrounding Thornton Creek, which runs through the property. He also recalled a statement that there would be more places to get rid of garbage than what currently exist. But he said the key item would be to get the trucks to use the freeway for access instead of the neighborhood streets.

Commissioner Sands said it would helpful to him if staff could provide a map showing what the site looks like now prior to the open house. He said it is difficult for him to determine exactly what the differences are between what is proposed and what currently exists.

Commissioner Sands inquired how the trucks would get from the freeway to the subject property. Chair Doennebrink answered that this is not possible now. But the proposed plan would use the same access as the metro buses. He noted that the metro bus barn is located right next to the subject property. Mr. Stewart briefly reviewed the proposed plan for accessing the freeway.

When asked if the facility would have to close down during the construction period, Mr. Stewart said he has heard discussion that some type of reciprocal arrangement would be made with Snohomish County during the time the facility is closed down. This would be similar to the arrangement that was made during the reconstruction of Snohomish County's new facility in Mountlake Terrace.

- **Central Shoreline Comprehensive Plan Amendments**

Mr. Stewart said the Central Shoreline Sub-Area Plan and Report has been an on-going effort for the past few years. However, the Sub-Area Plan is not ready for adoption because there are too many unknowns and variables and too broad of debates that still need to occur before final adoption. He emphasized that the plan is good and does provide some vision and opportunities for developers to work with. He noted that nothing that is proposed in the plan would be prohibited by the current development code. Therefore, a developer or private group could fulfill the vision that is outlined in the plan right now.

Mr. Stewart further explained that the sub-area plan consultant had originally proposed to mandate the vision as required types of development. The City would deny permits that were not consistent with the type of high-end, mixed-use redevelopment scheme identified in the plan. After listening to the community and talking with the economists and other people in the development world, they all agreed that the City is not ready to impose this type of regulation yet. If they were to do so, they could pretty much be assured that there would not be any reinvestment, and that would not serve the City well.

Mr. Stewart advised that while the Central Shoreline Sub-Area Plan is not ready to be mandated or formally adopted, it is ready for publication and finalization. He said one thing they heard overwhelming during the public process is that the City needs to make a decision about the location of the future public right-of-way. Staff will be proposing a future right-of-way map for the Aurora Corridor in the Central Area for adoption into the Comprehensive Plan. He referred to Attachment B, Map Grid 5 and noted the following:

- The map identifies the planned future right-of-way of Aurora Avenue North.
- Private property, including land, buildings and businesses, shall be acquired in accordance with Federal, State and Local law. A manual has been published to identify how any condemnation would occur to acquire the needed property.
- Public property needs for streets, sidewalks, trails and utilities should be coordinated and consolidated to the maximum extent feasible to minimize the acquisition of private property.

- For example, if there is an opportunity to combine or consolidate the interurban trail with the Aurora Project and reduce the amount of land or property required, they should do so.
- The total right-of-way is defined as including road, curb, gutter and amenity zone.
- There are deviations between the parcel lines and the right-of-way lines. In these cases the right-of-way lines are more accurate.
- The right-of-way survey was recently completed during the past month.

Mr. Stewart walked the Commission through the map to describe what all of the lines mean and what staff will be proposing for adoption into the Comprehensive Plan. He said the very dark lines on either side of Aurora Avenue indicate the existing right-of-way lines. He noted that on the right-hand side, the right-of-way line runs through a number of buildings. On the left-hand side, there is a setback of ten feet beyond the right-of-way line, and this was established as part of the redevelopment of the Cadillac Dealership property. The development code requires that a 10-foot setback must be established until the future right-of-way needs of the road are established. By adopting a formal designation of the right-of-way needs, the ten-foot setback on both sides of the road would be eliminated.

Mr. Stewart said the "dash-dot-dash" lines show the total future right-of-way needs. He noted that a major theme for all of the maps is the intention of holding the line on the west rather than taking part from the west and part from the east. Any acquisition that would be needed for future right-of-way would be on the east side of Aurora Avenue. He noted that the dash-dot-dash line on the right side of the plan shows the future right-of-way line, and it goes through all of the buildings on the right.

Mr. Stewart referred to the "dash-dash-dash" lines, which identify the planned road right-of-way needs. The difference between the two different dashed lines is the amenity zone. He said it might be possible to further reduce the amount of land that is needed after detailed designs for various facilities have been completed. At this time, they have chosen not to minimize the impact because staff feels the most important thing they can do is let people know what the intent is so that uncertainty and fear can be reduced.

Mr. Stewart emphasized that the map was created to illustrate right-of-way needs only. It does not implement or construct anything. It does not require the acquisition of property or demolition of buildings, etc. The intent of the map is to provide the business and property owners with an understanding of what is coming in their direction so that they can make appropriate decisions about the future of their property.

Next, Mr. Stewart referred to Grid Map 6, which shows the right-of-way off of Aurora Avenue. He said it is important to review this because it identifies areas where the City could consolidate and use multiple beneficiaries. He noted that Ronald Place is a publicly owned right-of-way. At this time, there are very serious encroachments into the public right-of-way by the boats. In addition, the Key Bank drive-thru also encroaches into the right-of-way. He said that Seattle City Light owns all the property between Ronald Place and Midvale Avenue, and all the uses on the right-of-way are on 30-day leases. He pointed out that Seattle City Light owns half of Midvale Avenue.

Mr. Stewart said that there are legal records on all of the lines that are identified on the map. Therefore, staff is confident that the lines are accurate. He noted that the staff has also chosen to show parcel lines as they currently exist in the GIS system, even though they are not entirely accurate when compared to the legal lines. Where there are discrepancies, the right-of-way lines dominate because they are significantly more accurate.

Mr. Stewart said the draft document was hand delivered to a number of businesses in the subject area by staff. Staff mailed the document to the balance of the businesses and to all the property owners today. Staff anticipates that the Planning Commission will conduct a public hearing on May 15, 2003 on the document as an amendment to the Comprehensive Plan. They are anticipating that the City Council will be able to take action at their meeting on June 9, 2003.

- **Sky Nursery Street Vacation**

Ms. Markle said that the Sky Nursery Street Vacation application is for the street at North 188th Street between the Seattle City Light right-of-way and Midvale Avenue. The subject property is completely bordered by property already owned by Sky Nursery. She recalled that during the Comprehensive Plan reconciliation process, a representative from Sky Nursery was present to discuss their proposal for expansion. As part of their plans, they are interested in acquiring additional land. The issue will come before the Commission for a public hearing on May 15, 2003. At their last meeting, the City Council set a hearing date for the street vacation as required by law.

Ms. Markle advised that prior to the public hearing staff would bring forward the easement language. They will have contacted all of the various utilities to find out what their needs are related to that portion of right-of-way. Staff has talked with the City's Engineering Department to see if there were any future plans for the right-of-way, and none have been identified. However, the City will retain some easements within.

## 8. PUBLIC COMMENT

**Janet Way**, 940 NE 147th Street, said she participated on the King County Transfer Station Advisory Committee. She pointed out that King County has tried to employ very high green building standards when they undertake projects. She said her belief is that they are going for the silver or gold standard on this project. This means that they address a certain number of stormwater runoff issues, etc.

Ms. Way said she still has some concerns about the detention ponds that are being proposed. It is important for the City to ensure that the detention ponds are done with state-of-the-art technology. She noted that a lot of concerns have been raised because the current thinking is that detention ponds are considered to be old technology now. There are some concerns that they could actually be damaging to creeks and fish because they sustain a higher level of runoff in the streams to meet the requirements of a 25-year storm instead of allowing a property to flood. She explained that when floods occur, the energy coming from the water is dissipated.

When it stays in the bank and runs at the medium level for longer periods of time, it is actually more damaging because it continues to scour the stream for a longer period of time. Ms. Way urged the City to obtain some current scientific opinions from hydrologists, geologists and fish scientists.

Ms. Way pointed out that in the County's EIS, their scientists have declared that, in fact, the stream that is north of the Aegis Property is a Class II Fish Bearing Stream because of the type of stream, the type of habitat, etc. King County has also noted that there are fish-eating birds upstream.

Commissioner Doering inquired if the Qwest Legislation Bill would have anything to do with the three projects that have just been discussed. She explained that Qwest has sued the City of Tacoma. They are looking to have utilities paid for by transportation funds. This will have an impact on all State transportation projects. Apparently, cities have been lobbying against the governor signing the bill that would allow transportation funds to be used for utility replacements or relocations, etc. Mr. Stewart said his understanding is that a city, as owner of the right-of-way, would grant a franchise agreement to the utility to locate within the right-of-way. Part of that agreement would include a provision that says that if the city were to reconstruct the road or ask the utility company to relocate, the utility company would be required to do so at their own expense. While he knows that some legislation has been proposed that would change this, he is not familiar with the details.

## 9. UNFINISHED BUSINESS

There was no unfinished business scheduled on the agenda.

## 10. NEW BUSINESS

There was no new business scheduled on the agenda.

## 11. AGENDA FOR NEXT MEETING

Ms. Markle reviewed that the King County Transfer Station Master Plan Open House would be held from 7:00 to 8:30 p.m. on May 1, 2003. The public hearing that was originally scheduled for that evening has been tentatively rescheduled on the June 5, 2003 agenda.

Ms. Markle reminded the Commissioners of the volunteer breakfast that is scheduled for May 7, 2003 at 7:30 a.m. and noted that the deadline to RSVP is April 25th.

## 12. ADJOURNMENT

The meeting was adjourned at 9:15 p.m.

Brian Doennebrink
Chair, Planning Commission

Lanie Curry
Clerk, Planning Commission

# Attachment C

LETTER FROM OFFICE OF COMMUNITY DEVELOPMENT RE: CRITICAL AREAS PROCEDURAL AND ADMINISTRATIVE REVISIONS

STATE OF WASHINGTON

OFFICE OF COMMUNITY DEVELOPMENT

*906 Columbia St. SW • PO Box 48350 • Olympia, Washington 98504-8350 • (360) 725-2800*

**February 12, 2003**

Anna Kolousk
Assistant Director
Planning and Development Services
17544 Midvale Avenue North
Shoreline, Washington 98133-4921

**RE: Submittal of Documents to the Office of Community Development for City of Shoreline**

Dear Ms. Kolousk:

Thank you for sending this department the following:

**Draft Amendment to the Critical Area Plan**

Proposed amendments to the organization and the procedures of critical areas regulations. Received on 02/07/2003.

We have forwarded a copy of this notice to other state agencies. If you have not sent the plan to the agencies on the list (enclosed), please do so.

If you have any questions or concerns, please call me at (360) 725-3056.

Sincerely,

linda weyl
for

Ike Nwankwo
Technical & Financial Assistance Manager
Growth Management Services

Enclosure

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