

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

<p>AGENDA TITLE: City Council Discussion of recommended Update to Critical Areas Regulations, Phase II</p> <p>DEPARTMENT: Planning and Development Services</p> <p>PRESENTED BY: Joseph W. Tovar, FAICP, Director</p>
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PROBLEM/ISSUE STATEMENT:

The chronology and issues related to the proposed CAO, as well as proposed amendments themselves, were transmitted to the Council prior to their October 24, 2005 public hearing. Project planner Matt Torpey presented the Planning Commission's recommendations at that time and the Council heard testimony from a number of people.

The January 17, 2006 meeting will provide an opportunity for the Council to discuss the proposed CAO and to ask questions of the staff. If, after that discussion, the Council so directs, the staff will bring Ordinance 398 to the February 13 regular meeting so that the Council may adopt the amendments.

Enclosed is a staff memo from Matt Torpey with additional background on this subject, including a staff response to the Washington State Department of Fish and Wildlife (WDFW) comment letter of October 21, 2005, an email from the Washington State Department of Community, Trade and Economic Development (CTED), and a public comment letter. If any Council member requires an additional copy of the October 24, 2005 staff report, which included the Planning Commission's recommendations, CTED and public comment letters, minutes of Planning Commission meetings and other materials, they should so indicate and we will get them an additional copy.


Finally, at the January 3, 2006 Council meeting, the City Council adopted Ordinance 407 that adopted a moratorium for SMC 20.50.310.A.1, an exemption from permit requirements for certain tree cutting activities, and in its place adopted an interim control for a period of four months. The Council will have a public hearing on February 6, 2006 to receive public testimony regarding Ordinance 407. After that hearing, the Council may take action to repeal or modify the provisions of Ordinance 407 in some way, or may elect to take no action, instead allowing the moratorium and interim controls to run until early May.

As described in the staff memo accompanying Ordinance 407 at the January 3 meeting, the staff proposes to work in the coming months with interested citizens and groups,

including, but not limited to, the Innis Arden Club and the Association for Responsible Management of Innis Arden, for the purpose of crafting proposed permanent regulations to address cutting of trees, including hazardous trees, in critical areas of the City. The Planning Commission's previous recommendations in this matter will provide the starting point for that effort, but we hope to provide some additional perspective and information for their consideration at public meetings and hearing(s) in March and April. Once the Commission forwards its final recommendation to the Council in late April or early May, the Council will have the opportunity to complete its review of this matter and adopt the final component of the City's critical areas ordinance.

RECOMMENDATION:

Staff recommends that the Council review the enclosed materials, as well as the materials distributed prior to the October 24 hearing, and discuss these materials at the January 17th meeting.

Approved By: City Manager  City Attorney ___

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

<p>AGENDA TITLE: City Council Workshop and Adoption of Ordinance No. 398 Updating Critical Areas Regulations, Phase II</p> <p>DEPARTMENT: Planning and Development Services</p> <p>PRESENTED BY: Matthew Torpey, Planner II</p>
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PROBLEM/ISSUE STATEMENT:

The City of Shoreline is required to update its Development Code as it relates to critical areas periodically as required by the Washington State Growth Management Act (GMA), RCW 36.70A.130 which states "Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopts them". The deadline established by the Washington State Department of Community, Trade and Economic Development (CTED) is December 1, 2005.

This meeting is the first City Council workshop since the closure of the public hearing held on October 24, 2005. Two issues arose during the public hearing that staff has addressed in attachments to this report.

The first issue is a comment letter from the Washington State Department of Fish and Wildlife (WDFW) submitted to the City on Friday, October 21, 2005. Staff has provided a memo to the Council providing an analysis of the comments provided by WDFW. This item is included as Attachment A.

The second issue that arose during the meeting on October 24 was what would happen if the City of Shoreline did not adopt an amended Critical Areas Ordinance prior to the December 1, 2005 deadline. Tim Gates with the Department of Community Trade and Economic Development has provided the City with an email outlining his department's policy regarding updates to local Critical Areas Ordinances'. This is included as Attachment B.

One public comment letter has been received since the public hearing; it is included in this packet as Attachment C.

The fourth attachment included with this package is the original staff report from the October 24, 2005 public hearing on the CAO. The staff report contains general information regarding the proposed update the CAO and is provided for reference. The staff report is included as Attachment D.

The fifth attachment included in the staff report is a table that outlines each change proposed to be amended by the Critical Areas Ordinance. This table was previously presented to the Council at the October 24 public hearing. The table is included as Attachment E.

The final attachment in the packet is Ordinance 398 which includes adopting language to amend the Critical Areas Ordinance.

Because this is a workshop and discussion related to a closed Public Hearing, no additional staff analysis or editing of the draft Critical Areas Ordinance has occurred. Staff has made the assumption that Council members have retained their individual copies of the proposed amendment and code that were provided at the October 24, 2005 meeting and have not attached the full code to this report. If any Council members or citizens require additional copies, they will be made available immediately.

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. City of Shoreline staff and consultants have provided the attached draft critical area code update while keeping expenditures within granted amount.

RECOMMENDATION

The Planning Commission recommends that Council approves Ordinance No. 398.

ATTACHMENTS

- Attachment A: Staff response to WDFW comment letter of October 21, 2005
- Attachment B: Email from CTED regarding CAO adoption compliance date
- Attachment C: Public Comment Letter
- Attachment D: Staff report from the October 24, 2005 Public Hearing
- Attachment E: Table of code sections proposed to be changed by the proposed CAO.
- Attachment F: Ordinance 398
- Attachment G: Excerpts from Oct. 24 Council meeting minutes

Approved By: City Manager _____ City Attorney ____



Memorandum

DATE: January 17, 2006
TO: Shoreline City Council
FROM: Matthew A. Torpey, Planner II
RE: Washington Dept. of Fish and Wildlife Comments

The City of Shoreline Planning Department received a comment letter from the Washington Department of Fish and Wildlife (WDFW) on October 21, 2005 one day before the opening of the public hearing on the proposed Critical Areas Ordinance. Planning Staff has reviewed their comments and have provided a response to the points raised by the department. Planning Staff comments to the individual comments from WDFW appear below each comment.

Section 20.80.030.G. Exemptions: work activities in areas with steep slopes could cause harmful effects to riparian areas near streams and marine shorelines. An example of this would be if development was allowed along a bankline, and a short time later, erosion was observed. A homeowner may be inclined to apply for bank protection, such as a bulkhead, in this case. Bulkheads prevent or slows down the deposition of sediment onto beaches. Over time, sand or gravel, which provide critical habitat for marine fish species, erode away thereby removing habitat where forage fish and juvenile salmonid prey items live. Because Richmond Beach, which is in the jurisdiction of the City of Shoreline, is a documented surf smelt spawning beach, it will be very important that steep slopes near streams or marine shorelines not be developed unless there is a sufficient buffer based on Best Available Science (BAS), refer: WDFW Management Recommendations for Washington's Priority Habitats, *Riparian* (Knutson et al, 1997).

- This existing code section was reviewed and no update was considered necessary. To address the department's concerns regarding potential impacts to streams and marine shorelines, this exemption specifically only applies to "small steep slopes" where the disturbance of these slopes will not have an impact to critical areas. Required buffers to streams, wetlands and marine shorelines will still apply. In the example cited in the above comment, all bulkhead replacement or work

performed on the shoreline of Puget Sound is governed by the City's Shoreline Management Plan.

Section 20.08.030.P. Exemptions: Language in this section would allow six significant trees to be removed from a critical area or critical area buffer provided sufficient mitigation is offered to offset the impact. Removing vegetation along buffers negates the purpose of the buffer, namely, to have vegetation for filtering pollutants, sediment, and provide shading in small streams. Significant trees may also contain important wildlife species (e.g., eagle nest/perch trees, trees with cavities) and should be protected to the greatest extent possible. WDFW has several questions and comments regarding statements in this section. What is the intent of having this language in the document? Is it to allow homeowners view property? If this is the case, there are other alternatives that are less destructive for fish and wildlife habitat. One alternative is to allow "limbing" the tree. Up to 1/3 of the canopy could be removed without significantly harming wildlife species and at the same time allow adequate views. In order to properly protect fish and wildlife, WDFW recommends language be inserted that states tree removal would be prohibited in geological hazardous areas unless it is a threat to life or property. In addition, the need for tree removal should be justified (based upon a report by a qualified professional arborist). WDFW also has concerns about cumulative impacts that may result from this language. If each property owner is allowed to remove up to six significant trees, this could have much larger ramifications than anticipated on fish and wildlife habitat, particularly if two or more separate development tracts are adjacent to one another.

- This section has been removed from the Draft Critical Areas Ordinance by recommendation of the City of Shoreline Planning Commission.

Section 20.80.040.1 and 2, Partial exemptions: This language would adequately address the needs of fish and wildlife provided that there is a requirement to examine alternatives using Low Impact Development on the site.

- This existing code section was reviewed and no update was considered necessary. These codes ensure that if a structure is damaged or destroyed; it may be rebuilt or repaired regardless of whether it is in a critical area as long as it was constructed legally prior to November 27, 1990. It is the view of the City of Shoreline that if a citizen loses their home to fire or natural disaster, they should be allowed to rebuild without a penalty because of no fault of their own.

Geologic Hazard Areas, Section 20.80.210.D: Language in this section allows buffers to be reduced to 15 feet when technical studies demonstrate that the reduction will not increase the risk of the hazard to people or property. This language is acceptable

PROVIDED the hazard areas are not located in, or adjacent to, fish and wildlife habitat conservation areas (FWCA). Reducing the buffers and allowing development to occur within 15 feet of the bluff may have the ultimate effect of allowing additional shoreline armoring if a homeowner becomes worried that continued erosion may endanger a house or property in the future.

- The full buffers of streams and wetlands will still apply regardless of a geotechnical engineer's recommendation to reduce the setback to a steep slope. This setback reduction will also not apply to areas designated as Fish and Wildlife Habitat Conservation Areas which include marine shorelines.

Fish and Wildlife Habitat Conservation Areas (FWHCA): There is no mention of marine shorelines in this section, except to state that they are classified as FWHCA. There is considerable potential to improve marine shorelines within the City of Shoreline because of the high number of bulkheads, ramps and other shoreline modifications structures. Improvements can be made as these structures are repaired or replaced. In addition, Richmond Beach contains documented surf smelt spawning habitat, an important prey item for adult salmonids. Specific recommendations for allowable construction practices for boats, ramps, and piers should be included here. For example, prohibit treated wood, examine the feasibility of using soft-bank protection instead of hardened structures such as bulkheads, and discuss the impacts of cumulative effects that these structures have along Puget Sound shorelines. The WDFW would be happy to assist you with the details of how to implement Best Management Practices along marine shorelines.

- Marine shorelines will be protected by new provisions to include the shoreline of Puget Sound as Fish and Wildlife Habitat Conservation Areas. Additionally, bulkhead, ramp, and other shoreline development is further regulated by the City's Shoreline Master Plan.

Section 80.08.300 Mitigation performance standards and requirements: It may be helpful to planners and the public if more detail was provided in this section. For example, the Washington State Department of Ecology (DOE) has several publications (Vegetation Management: A Guide for Puget Sound Bluff Property Owners, publication 98-31, Surface Water and Groundwater on Coastal Bluffs, publication 95-107, and Slope Stabilization and Erosion Control Using Vegetation, publication 93-30) that identify the types of vegetation that can be planted along streams and shorelines to help stabilize banklines in critical area habitats.

- Whenever mitigation is required for impact to a critical area, a qualified professional for that particular critical area is required to provide the mitigation measures. The City of Shoreline is more than happy to work with these professionals and reference appropriate materials.

Section 20.80.330.A, Wetlands, Required buffer areas Language should be revised in this section. The 1987 DOE Wetlands Manual is referred to for delineating wetland buffers. A new DOE manual has been adopted and contains the most up-to-date BAS on wetland science. Wetland buffers should be based on the new updated Volume 1 Synthesis of the Science, Publication #05-06-006, Wetlands in Washington State, Volume 2, Publication #05-06-008 and the Washington State Wetland Rating System for Western Washington, Publication #04-06-025.

- The City of Shoreline Planning Commission intends to investigate the adoption of the new Washington State Wetland Rating System for Western Washington in early 2006.

Section 20.80.330.B, Wetlands, Required buffer areas: The wetland buffers proposed by the City of Shoreline are considerably less than those recommended in the latest DOE wetlands manual referenced above. This document is based on a synthesis of scientific literature, and it represents DOE's view of best available science. The City of Shoreline has not provided any scientific analysis or support that demonstrates that the proposed buffers will adequately protect the functions and values of wetlands. The wetland buffers proposed by the City of Shoreline will likely result in significant adverse impact of fish and wildlife species, including species that may be listed as endangered, threatened, or sensitive, and fish species that are anadromous.

- The City of Shoreline's Best Available Science documents are available online and do, in fact, provide analysis of these issues. The Planning Commission has recommended increasing the buffers of wetlands and streams 15% to 250%. Additionally, in many cases, wetland enhancement is required in addition to the buffer areas when a development is proposed. In many cases it is better to have enhancement of a degraded wetland or stream in addition to the buffer requirements rather than institute a strict larger buffer that will not provide any habitat or resource improvement. Because Shoreline is such an urban area, the large buffer areas recommended by the DOE may not be the best way to protect a wetland in a dense urban area. Having a buffer that is simply a greater distance from a critical area may help, but not if it is maintained lawn that does not serve the same functions and values as a smaller buffer with enhancement and native wetland plantings that serve to increase the value of the resource. The City of Shoreline is proposing to adopt wetland and stream buffers that are greater than those of many of our neighboring jurisdictions including the City of Seattle.

Stream Areas, 20.80.470, Classification: although the stream typing system chosen by the city may be adequate, it is not consistent with the new water-typing system used by state agencies and many local jurisdictions. This may cause some confusion for the public or planners, and WDFW recommends that the city adopt the new stream classification system.

- The City of Shoreline’s Best Available Science justifies the stream classification system. Staff believes that it is adequate and is easy to understand and use by both the public and state agencies.

Stream Areas, 20.80.470.F1., Classification: this subsection proposes to clarify the term salmonid fish use by defining it as where fish have been documented, as well as where they are presumed to be, based on passability and planned restoration. Planned restoration projects are too narrowly defined and this may prevent future restoration efforts in some cases. The definition of salmon passability would only apply to restoration efforts outlined in a 6-year capital improvements plan, or, a planned removal of a dam. Instead of narrowly defining presumed salmonid use under these two circumstances, WDFW recommends that subsection F1 be reworded to say “*Streams where naturally recurring and **historical** use by salmonid populations has been documented... .*” Subsection F2 should be reworded to read “*Streams that are fish **passable or have the potential to be fish passable**... .*” In many cases, there are barriers preventing salmonids from entering waters further upstream that are easily correctable. Voluntary restoration efforts, both small and large, are undertaken by citizens and local governments and are continuing to increase throughout Puget Sound. Collectively they represent a very significant contribution to the recovery of Puget Sound chinook salmon.

- Staff does not agree with the above recommendation. Using “historic or future potential use” as criteria is not based on best available science. For a stream to be considered a salmonid stream, staff believes that there actually has to be salmonids present, or there has to be a plan in place to allow salmonids to be present at some foreseeable point in the future. We also have no ability to mitigate the numerous and significant barriers downstream that are outside of our control and for which there are no foreseeable plans for removal (for example I-5). To respond to the comments regarding chinook salmon, according to the Washington Resource Inventory Area 8 (WRIA 8) report that is part of the City’s best available science, stream areas in Shoreline do not contribute significantly to the population recovery of chinook salmon but rather serve as episodic areas of habitat, which is the lowest identified category in their report. It is staff’s understanding that WDFW was an active participant and signatory to the WRIA 8 report.

Stream Areas, 20.80.470, Classification (last underlined paragraph at bottom of page): this sentence should be deleted from the text, as it could be used by developers to encourage development in degraded areas that have fish use, or, have potential for fish use. More important, it ignores the fact that streams and small creeks are interconnected with one another and are influenced by stressors occurring upstream or downstream at a particular site. If development is allowed to occur in currently degraded areas causing more degradation and increased stressors to a stream, effects of that activity could be observed upstream or downstream of the project site affecting clean, more pristine areas.

- This section will only apply when items 1, 2, and 3 outlining the parameters for identifying a stream used by salmonids have not been met. All presumptions will be investigated by a qualified professional and the City reserves the right to require third party review at the applicant's expense.

Table 20.80.480B. Required buffer areas: The riparian buffers proposed by the City of Shoreline are considerably less than those recommended by WDFW in its publication titled "Management Recommendations for Washington's Priority Habitats: Riparian." This document is based on a synthesis of scientific literature, and it represents WDFW's view of "best available science" regarding an important component in the protection of riparian areas across Washington State. The City of Shoreline has not provided any scientific analysis or support that demonstrates the proposed buffers will adequately protect the functions and values of riparian areas. The riparian buffers proposed by the City of Shoreline will likely result in significant adverse impact of fish and wildlife species, including species that may be listed as endangered, threatened, or sensitive, and fish species that are anadromous. WDFW would welcome the opportunity to provide technical assistance to the City of Shoreline as it continues to develop an ordinance that adequately protects fish and wildlife resources.

- The City of Shoreline's Best Available Science documents are available online and do, in fact, provide analysis of these issues. Similar to the response above regarding wetland buffers, the Planning Commission has recommended increasing the buffers of wetlands and streams 15% to 250%. Additionally, in many cases, stream enhancement is required in addition to the buffer areas when a development is proposed. In many cases it is better to have enhancement of a degraded stream in addition to buffer requirements rather than institute a strictly larger buffer that will not provide any habitat or resource improvement. The City of Shoreline's buffer recommendations are in line with what is recommended by the WRIA 8 report for protecting riparian corridors. Simply imposing large buffers is not the best way to protect streams in urban areas where development such as homes with maintained lawns and businesses already exist within the buffers in many cases.

Section 20.80.480D2: This section would allow construction of roads, utilities, and accessory structures within stream buffers when no feasible alternative location exists. "No feasible alternative" leaves much up to interpretation and does not require any systemic evaluation that would ensure all alternative were adequately examined. WDFW recommends that this paragraph add a sentence that states "Prior to approval of building new roads, utilities, or accessory structures in buffers along streams, an alternatives analysis must be conducted to ensure all possible alternatives have been examined and that no viable alternative exists. This evaluation must be documented in a written report and provided to respective governmental agencies with jurisdictional authority to ensure

all alternatives have been examined. If it is determined that no alternative sites are feasible to build at, the impacts must be fully mitigated.”

- This existing code section was reviewed and no update was considered necessary. Staff believes that the statement “when no feasible alternative location exists” requires that the City investigate all possible alternatives for road or utility placement prior to construction.

Section 20.80.480F: This section discusses buffer averaging. In order to ensure fish and wildlife is being protected to the greatest extent possible, a paragraph should be added here that states that a habitat survey will be conducted within the area of concern in order to identify and prioritize highly functional fish and wildlife critical habitat within the study area. Buffers at locations containing highly functioning fish and wildlife habitat should be protected and buffers should not be reduced in those areas. On the other hand, areas containing habitat of minimum value should be where reductions occur.

- Among the numerous items that City of Shoreline Planning staff investigates whenever a buffer reduction is proposed, fish and wildlife habitat is among them. The proposed CAO will establish stream buffers as Fish and Wildlife Habitat Areas, any proposed impact to these areas will require review by a qualified professional.

Section 20.80.480.H2. Restoring Watercourses: wording in this paragraph will likely result in significant impacts to fish and wildlife resources. As written, at locations where piped watercourses are daylighted and habitat is restored, buffers could be reduced to 10 feet. The rationale given is that the standard buffers would discourage restoration efforts. Unfortunately, the time and money spent in daylighting the stream would be negated by having a severely deficient buffer. In fact, doing so could result in *greater* impacts to the stream than by not daylighting at all since those stream sections could be exposed to a higher level of pollutants, temperatures and sedimentation than it would going through a pipe. It is important that the City acknowledge and provide incentives for restoration efforts but it must be done in a manner that will be beneficial to fish and wildlife resources. It is very important that buffers in areas where streams are daylighted be the same or greater as buffers in other FWHCA.

- The WDFW’s concerns that daylighting a stream will cause more harm than good is covered under SMC 20.80.480 (H)(3), which states that the removal of pipes shall only occur when the City determines that the result will be a net improvement in water quality. Again, any proposed daylighting would be reviewed by a qualified professional. (The fact that daylighting in some areas with WDFW proposed buffers puts the critical area in the middle of an existing living room may be a disincentive to daylight)

Section 80.80.490.B1. Alteration: This section states that culverts are allowed for Type II, III, and IV streams. This may very likely lead to significant impacts to fish species. Since all streams within the City's jurisdiction are Type II-IV, this would allow culverts to be built for all streams within the City of Shoreline. WDFW suggests that wording be such that culverts would only be allowed after all avoidance alternatives have been examined. This would need to be in report form and would have to list reasons why buildings, structures, or roads could not be placed outside of the critical areas. In addition, the developer should have to demonstrate that having a culvert would better protect fish and wildlife resources than having an open channel.

- This existing code section was reviewed and no update was considered necessary. If a stream is proposed to be culverted, the applicant would be required to go through the permit and SEPA process. During permit review studies would be required determining the impacts to the streams. Under authority of SEPA, the City has the ability to apply conditions to a project to minimize potential impacts.

Section 20.80.500.D. Mitigation performance standards and requirements: This section needs to be reworded in order to properly protect water quality in streams and along shorelines. The last sentence in the paragraph states that performance standards outlined in this section only apply to Type I-III streams within the City. Type IV water bodies also need to be included here because pollutants or other stressors to Type IV streams with less protection can impact Type I-III streams if they happen to be inter-connected with one another, which they usually are. What happens upstream or downstream of a site can impact fish and wildlife along the entire gradient.

- This existing code section was reviewed and no update was considered necessary. Because type IV streams are non-salmonid bearing and only flow intermittently, many items in the performance standards would not apply.

Page 72, Section 20.80.500.F. Mitigation performance standards and requirements: This section needs to list the length of time that monitoring may be required. For significant projects, monitoring should be a minimum of 5 years and up to 10 years or more depending upon the magnitude of the impact or restoration effort. Monitoring need not be on an annual basis. This could be adjusted, for example, on an annual basis for the first three or four years and then every other year, or every third year thereafter.

- This existing code section was reviewed and no update was considered necessary. Monitoring of a site specific plan requires that the monitoring program be flexible and not adhere to a certain criteria for all projects. The way the code is written

allows staff or a qualified professional to determine what the appropriate monitoring period is based on the site and project conditions.

This concludes the City of Shoreline Planning Department's analysis of comments provided by the Washington State Department of Fish and Wildlife.

Attachment B

From: Gates, Tim (CTED) [TimG@CTED.WA.GOV]
Sent: Wednesday, November 09, 2005 5:24 PM
To: Matt Torpey
Subject: GMA deadlines and consequences

Matt,

RE: clarifying consequences of missing the "Dec 1 2005 deadline" for critical areas update

1) Eligibility for certain state grant/loan programs

The 2005 Legislature (in ESHB 2171) amended the GMA "to grant jurisdictions that are not in compliance with requirements for development regulations that protect critical areas, but are demonstrating substantial progress towards compliance with these requirements, twelve months of additional eligibility to receive grants, loans, pledges, or financial guarantees from the public works assistance and water quality accounts in the state treasury." (See RCW 36.70A.130).

The city's original deadline was Dec 1 2004, so the additional year of eligibility ends Dec 1 2005. However, the real eligibility deadline depends on whether or not you're applying for one of these grants. For ex., Public Works Trust Fund applications for construction loans are not until May, so if the city is contemplating applying for P WTF money, you would need to have completed all your update work before then at the very latest.

2) Risk of "failure to act" petition

Because the legislature was not able to retroactively change the city's original 2004 deadline for compliance, theoretically the city remains vulnerable to a "failure to act" petition until you "take legislative action" (resolution or ordinance) declaring that your update is complete. RCW 36.70A.130(1)(b)]

CTED recommends that if local governments are delayed too long they reduce this risk by taking steps to demonstrate good faith and progress through a resolution that documents local progress already made and containing a schedule for completing the update. However, this hardly seems necessary if you are making progress and intend to take your final update action (e.g., CAO adoption) later in December.

Good luck, and please let me know if you need further information.

Tim Gates
Growth Management Services
Department of Community, Trade and Economic Development
128 10th Avenue SE, PO Box 42525
Olympia, WA 98504-2525
(360) 725-3058
email: timg@cted.wa.gov
web site: www.cted.wa.gov/growth
<<Tim Gates (CTED) (E-mail).vcf>>

12 November 2005

Shoreline City Council
City of Shoreline
Shoreline City Hall
17544 Midvale Ave. N.
Shoreline, WA 98133

Dear Councilors,

My wife, Sonja, and I want to express our deep concern about the adoption of the Critical Areas Ordinance (CAO) without inclusion of amendments that permit Exemptions for Views. Again, I fear the City Planning Commission has given you poor advice as we discuss below.

One of the wonderful aspects of the City of Shoreline is the diversity of neighborhoods that exist within the City. Those of us who live in Innis Arden reside in a community that was established over 50 years ago as a view community with mountain and water views. This is one of the few neighborhoods in the City which has this characteristic hallmark feature.

Innis Arden has had considerable experience in managing and maintaining its reserves and the views that make the neighborhood beautiful and unique. Without management by the Innis Arden Board, the reserves could become ugly as well as a fire hazard to those of us who live here. Furthermore, it would appear that the City would become heavily involved in their maintenance. Is this the wisest use of our tax dollars in Shoreline? Do we really need micromanagement of our reserves from this added level of government considering the expense associated with the bureaucracy required for this?

Moreover, those of us who voted to become incorporated into the City did not wish, nor could ever have imagined that the property rights in our community would be assumed by those who do not reside here. Why cannot the City respect the long-standing covenants of neighborhoods that have been part of the community for so long?

The model that many of us would recommend would be compatible with protecting the critical areas and at the same time providing management and maintenance of the reserves for views in attractive park-like settings. Why not at least adopt a specific statement in the CAO that the City will work with the Innis Arden Board to develop a plan for dealing with views that is compatible with the community covenants?

We appreciate this opportunity to express our opinions about the CAO as they pertain to views. While we applaud your efforts in dealing with these issues, we encourage you to work with the neighborhoods in developing ordinances that are a win – win situation for the City and the distinctive neighborhoods that make the City so diverse and vibrant. After all, beautiful views of Puget Sound and the Olympic Mountains are inspiring to all City residents and have been part of the City of Shoreline long before it became incorporated. Is what the City contemplating on doing to the view communities in Shoreline really well thought through and fair or a blanket cross-city plan that is overly simple and mean-spirited?

A final question for you to ponder: If you had the authority to do so, would you also impose your inflexible rules on trees and views to the Richmond Beach Waterfront Park with its spectacular views of the Sound and Mountains? This park adjoins Innis Arden and is contiguous with its reserve areas.

Sincerely,

James T. Staley
18545 Springdale CT NW
Shoreline, WA 98177
cc: Matt Torpey, Shoreline Planner

Sonja J. Staley

Council Meeting Date: October 24, 2005

Agenda Item:

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

<p>AGENDA TITLE: Public Hearing and Adoption of Ordinance No. 398 Updating Critical Areas Regulations, Phase II</p> <p>DEPARTMENT: Planning and Development Services</p> <p>PRESENTED BY: Matthew Torpey, Planner II</p>

PROBLEM/ISSUE STATEMENT:

The City of Shoreline is required to update its Development Code as it relates to critical areas periodically as required by the Washington State Growth Management Act (GMA), RCW 36.70A.130 which states "Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopts them". The deadline established by the Washington State Department of Community, Trade and Economic Development (CTED) is December 1, 2005.

The City of Shoreline chose to divide the adoption of its critical areas ordinance into two phases. The first phase of changes to the critical areas regulations was adoption of procedural amendments by Ordinance 324 in on June 23rd, 2003. The second phase of updates to the critical areas regulations is the adoption of "substantive" changes to the Development Code which is before the Council at this time.

The Planning Commission held workshops and public hearings to review the proposed changes to the critical areas regulations on January 20, February 17, March 17, April 7, July 21, and formulated its recommendation to Council on the proposed amendments on August 4, 2005. The final vote on the recommended draft version was 6 in favor, one opposed.

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. City of Shoreline staff and consultants have provided the attached draft critical area code update while keeping expenditures within granted amount.

RECOMMENDATION

The Planning Commission recommends that Council approves Ordinance No. 398.

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

In 2003, it was decided that the update of the critical areas regulations would be divided into two phases. The first phase of the review of the update to the Critical Areas Ordinance involved administrative and procedural changes to the Development Code. Numerous workshops and public hearings were held before both the Planning Commission and City Council resulting in the passage of Ordinance 324. The second phase of the update to the critical areas regulations was put on hold pending the passage of the Shoreline Comprehensive Plan update and adoption of the Shoreline Stream Basin and Characterization report. Both of these items were adopted by the Council in 2005.

The second phase of revisions, now before the Council include those revisions that will address the substantive protection standards contained within the Critical Areas Ordinance.

BACKGROUND

A review of the critical areas regulations by staff, consultants, citizens, and state and local agencies uncovered a variety of items in our current regulations that should be changed or updated including the following main issues:

- Significant increases in stream and wetland buffer requirements, ranging from 15% to 250%.

¹ RCW 36.70A.060(2)

² RCW 36.70A.172(1).

³ RCW 36.70A.030(5).

- Elimination of the disparity in levels of protection between wetlands and streams.
- Significant increases in Wetland replacement and enhancement ratios.
- Clarification of the terms “salmonid fish use”.
- Clarification that Fish and Wildlife Habitat areas are places formally designated by the City of Shoreline, based upon a review of BAS and input from the Washington Department of Fish and Wildlife, Washington Department of Ecology and other agencies.
- A new provision encouraging the restoration of piped and denigrated watercourses.
- Amends the definition of “reasonable use”

A table identifying proposed code changes with their appropriate code section and a description of the changes is included as Attachment E.

The Planning Commission held workshops and public hearings to discuss the staff recommended changes on January 20, February 17, March 17, April 7, July 21, and August 4, 2005. The Commission recommended approval of all proposed changes by staff with the exception of recommending a Critical Areas Stewardship Plan that would allow for trimming and cutting of trees in critical areas provided that it can be proven through various environmental analysis that the functions and values of the critical areas would be retained. The City Council was presented with and passed a motion to initiate mediation regarding this matter as well as mediate the definition of “hazardous trees”.

Public Comment:

As of October 10, 2005, 86 public comment letters have been received. Of these 86 approximately 90% of comments regarded view preservation and tree issues. The remaining 10% were letters of support for the draft code, specifically acknowledging the increase in buffers for streams and wetlands as well as the proposed increase in wetland buffer enhancement and replacement ratios.

Comment letters were also received from CTED who acts as the clearinghouse to solicit comments from agencies within the Washington State Government. These agencies include, but are not limited to: Washington State Department of Fish and Wildlife, Department of Ecology, Department of Health, King County Environmental Health and the Attorney Generals Office to name a few. Staff has attached the comments received from CTED as well as separate comments received from the Department of Ecology (DOE) (Attachment B), and included a brief analysis of these comments and how they were incorporated into our code changes (Attachment F).

Any member of the Council or public may view all of the public comments in their entirety at www.cityofshoreline.com. On the main page of the City’s website is a listing for “Critical Areas Ordinance”. Following this link will lead to all provided comments presented chronological order. Attaching all public comments received by the Planning Commission would prove to be overwhelming due to the excessive length of the combined comments (over 500 pages).

SEPA:

Staff issued notice of an anticipated threshold determination of non-significance on October 6, 2005. The comment period on SEPA closes October 20, 2005. The reason for this relatively late date of SEPA issuance was because of the need to hold the noticing of SEPA until the draft code was finalized. The date staff finalized the draft Critical Areas Ordinance was October 4, 2005. This coincides with the Council's motion to remove the definition of "hazardous trees" from the draft code and begin mediation proceedings regarding tree view issues and a Critical Area Stewardship Plan on October 3, 2005.

State and Agencies with Jurisdiction Review:

As required by the Growth Management Act, staff mailed the proposed changes to the critical areas ordinance to the Washington State Office of Community Development on January 10, 2005 for the mandatory 60 day review period. CTED acts as the "clearinghouse" agency with jurisdiction for review and distribution of each jurisdiction's critical areas ordinance. The City was notified of receipt of the documents and at the close of review, the agency's comments are included as Attachment B.

RECOMMENDATION

The Planning Commission recommends that Council approves Ordinance No. 398.

ATTACHMENTS

- Attachment A: Ordinance 398 with Exhibit A (Staff and Planning Commission Recommended Draft dated October 6, 2005)
- Attachment B: CTED and DOE Public Comment Letters
- Attachment C: Adolphson and Associates Best Available Science Memorandum
- Attachment D: Planning Commission Minutes of January 20, February 17, March 17, April 7, July 21, and August 4, 2005
- Attachment E: Table of code sections proposed to be changed in Exhibit A
- Attachment F: Staff analysis of comments provided by CTED and DOE

**City of Shoreline Critical Areas Ordinance
Overview of Proposed Changes**

Topic	Code Section	Description of Proposed Change
Critical Areas Definition	20.20 Critical Areas	Change the definition to match the state definition that is consistent with the Growth Management Act
Reasonable Use Definition	20.20.044 R	Eliminate the last sentence of the definition that states that "Reasonable use shall be liberally construed to protect the constitutional rights of the applicant."
Stream Definition	20.20.046 S	Add a sentence that clarifies that water need not be present year round for a channel or bed to be considered a stream.
Requiring Tree Planting	20.50.360(C)	Require a replacement tree to be planted in the event a tree that is hazardous, dead, or dying is removed.
Wetland Exemptions	20.80.030(F)	Previously all wetlands under 1000 square feet were exempt from regulation. Change the exemption so that only isolated wetlands of the same size are exempt from regulation.
Conservation Activities	20.80.030(H)	Add a new exemption that allows conservation activities and native vegetation planting in critical areas and their buffers.
Activities in a critical area	20.80.030(L)	Include beach and water related activities among the other actions allowed within a critical area.
Notice to Title	20.80.050	Require applicants to place a notice on title when the presence of critical areas is known.
Mitigating Impacts to Critical Areas	20.80.080	This section is altered to clarify what steps that applicant must take if impacts to critical areas or their buffers are proposed.

Topic	Code Section	Description of Proposed Change
Geologic Hazard Areas	20.80.210	The designation of geologic hazard areas is further defined to explicitly designate areas that have one or more qualifiers of a hazard area.
Classification of Geologic Hazard Areas	20.80.220	Change the typing classification of geologic hazard areas to remove ambiguity. Previously there were both classes of hazards as well as named hazards. Number classifications are removed in favor of more descriptive named categories.
Landslide Hazard Buffer	20.80.230	Include a specific required buffer area for landslide hazard areas. Code previously did not establish a buffer for landslide hazard areas.
Bonding Work in Geologic Hazard Areas	20.80.250(B)(11)	Require the posting of a bond to cover monitoring and maintenance of work within a geologic hazard area
Fish and Wildlife Habitat	20.80.270	Broaden the definition of Fish and Wildlife Habitat Conservation Areas to include wetlands, streams, their buffers, and the Puget Sound up to the ordinary high water mark.
Wetland Definition	20.80.310	The definition of wetland is being expanded to be consistent with the GMA, also it addresses what areas are not considered wetlands such as bio-swales, ditches, and detention facilities.
Wetland Buffers	20.80.330(B)	Wetland buffers are proposed to be increased for all wetland types. The percentage of increase ranges from 15% to 250%.

Topic	Code Section	Description of Proposed Change
Wetland Buffer Averaging	20.80.330(F)	This section is altered to clarify the requirements of buffer averaging as well as including statements to ensure that equal or greater protection of the wetland is achieved if buffer averaging is used.
Wetland Replacement Ratios	20.80.350(D)	Wetland replacement and enhancement ratios are proposed to be significantly increased to comply with the Department of Ecology's recommended ratios.
Stream Classifications	20.80.470	The stream classifications are simplified to focus on salmonids as a determining factor in stream classification. Additionally, a new stream classification "piped stream segments" is added to address when a stream enters an underground channel.
Salmonid Fish Use	20.80.470(F)	This section is added to clarify exactly what salmonid fish use means, and when to apply code sections that deal with salmonid fish use.
Stream Buffers	20.80.480(B)	Stream buffers are proposed to be increased for all stream types. The buffer requirements will match those of the wetland buffers to remove inconsistency of buffer application.
Stream Buffer Averaging	20.80.480(F)	Similar to wetland buffer averaging, this section is clarified and wording is added to ensure an equal or greater level of protection in the event stream buffer averaging is applied.

Topic	Code Section	Description of Proposed Change
Restoring Piped Watercourses	20.80.480(H)	Under the current code, there is a disincentive to an applicant or agency who wishes to restore piped watercourses. If a piped watercourse were to be “daylighted” under the current code, the full buffer width would apply severely limiting development that may occur when an applicant proposed to improve a stream corridor.

ORDINANCE NO. 398

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON AMENDING THE DEVELOPMENT CODE TO UPDATE AND CLARIFY ADMINISTRATION AND PROCEDURES FOR IMPLEMENTING CRITICAL AREAS REGULATIONS INCLUDING AMENDING THE SHORELINE MUNICIPAL CODE CHAPTERS 20.20, 20.50, AND 20.80.

WHEREAS, the City adopted Shoreline Municipal Code Title 20, the development Code, on June 12, 2000; and

WHEREAS, The City has completed a review of its development regulations in accordance with the Washington State Growth Management Act (GMA), RCW36.70A.130, which states “Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopts them”; and

WHEREAS, the City initiated review of its critical areas regulations in 2002 and adopted general provisions related to the critical areas in 2003

WHEREAS, the Planning Commission developed a recommendation on the amendments; and

WHEREAS, a public participation process was conducted to develop and review amendments to the Development Code, Critical Areas including:

- A public comment period was advertised from December 17, 2004 to January 20, 2005.
- The Planning Commission held workshops and a public hearing on the proposed amendments on January 20, February 17, March 17, April 7, July 21 and formulated its recommendation to Council on the proposed amendments on August 4, 2005; and

WHEREAS, the proposed amendments were submitted to the State Department of Community Development for comment pursuant to WAC 365-195-820; and

WHEREAS, the Council finds that the amendments adopted by this ordinance are consistent with and implement the Shoreline Comprehensive Plan and comply with the adoption requirements of the Growth Management Act, Chapter RCW 36.70A and;

WHEREAS, the Council finds that the amendments adopted by this ordinance meet the criteria in Title 20 for adoption of amendments to the Development Code;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Amendment. Shoreline Municipal Code Chapters 20.20, 20.50, and 20.80 are amended as set forth in Exhibit A, which is attached hereto and incorporated herein.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. Effective Date and Publication. A summary of this ordinance consisting of the title shall be published in the official newspaper and the ordinance shall take effect five days after publication.

PASSED BY THE CITY COUNCIL ON JANUARY 17, 2006

Mayor Robert Ransom

ATTEST:

APPROVED AS TO FORM:

Scott Passey
City Clerk

Ian Sievers
City Attorney

Date of Publication:
Effective Date:

OCTOBER 24, 2005 MINUTES OF CAO DISCUSSION

8. ACTION ITEMS: PUBLIC HEARING

- (a) Public hearing to receive citizen's comments on updates to the Critical Areas Ordinance (CAO) as recommended by the Planning Commission

Steve Burkett, City Manager introduced the CAO and said the Planning Commission has recommended passage of the CAO. He said this item would be placed on the agenda at the December 12 Council meeting for final approval.

David Harris, Planning Commission Chair, outlined that the process began in December 2004 and over 100 comments were considered. Most of them, he pointed out, were concerning tree and view issues. The Planning Commission voted to remove these two issues and the stewardship plan from the CAO final draft. The final vote of the Planning Commission to forward this draft to the Council for adoption was 7-1.

Matt Torpey, Planner, highlighted the four major issues the CAO encompasses. He said the Planning Commission increased the wetland replacement, wetland enhancement, stream buffer, and wetland buffer requirements and ratios. The buffer types were also revised so the buffers for the same types of streams will be the same. Additionally, the definition of stream was expanded to include private dam removal so when an area becomes fish passable it will be called a "fish stream". There are also new provisions which encourage the restoration of piked or denigrated water courses, and the term "salmonid fish use" was added. Another issue was that there is no definition for fish and wildlife habitat areas in the Code. The revised Code adds the classification of designated fish and wildlife habitat areas to the Puget Sound and all streams, wetlands, and buffers up to the ordinary high watermark. A portion of the Code was deleted because legislation was passed that prohibits a City telling a developer where they can place mobile homes. Mr. Torpey said four letters were received by the City pertaining to the CAO and were distributed to the Council for consideration. He concluded that City staff recommends Council adoption of the proposed CAO.

Mayor Hansen opened the public hearing.

- a) Erica Seether, Shoreline, said she is concerned that the current Code allows for the cutting of up to six trees in a 3 year time frame without a permit. She informed the Council that this occurs in Richmond Highlands and there is no tracking of the trees being cut. She urged the Council to inventory all of the trees in Shoreline, noting that there is no basis for the current six tree rule.

- b) Janet Way, Shoreline, concurred with the previous speaker and said the City should have a tree inventory. She felt the meeting should be continued and the SEPA checklist is her primary concern. She contended that there are Chinook salmon in Thornton Creek and the CAO incorrectly reflects there are no fish in the City at all. She questioned why the spraying of toxic chemicals is not listed in the environmental health

hazards section because the City endorses spraying the streets. She disagreed with staff's summary that there were no historical sites in the City of Shoreline. She said the mediation of the stewardship and tree cutting/preservation issue is inappropriate because other parties need to be a part of the mediation. Additionally, it is inappropriate to piecemeal the CAO. She concluded that the City needs to protect all fish and wildlife as outlined in the Pilchuck decision of the Growth Management Hearings Board.

c) Barbara Lacy, Shoreline, said she would like to see more interaction between the Planning Department and the Surface Water Department. She said the definition for lake is not in the Code and the definitions for bodies of water in the Code are confusing. However, she said she was encouraged by page 10 of the CAO about exemptions and the efforts to conserve the fish, birds, and other wildlife.

d) John Lombard, Thornton Creek Alliance (TCA), thanked the Planning Commission for thoughtful consideration of the City's proposed CAO and urged the Council to adopt the Commission's recommendations. However, TCA remains concerned that the proposed ordinance does not follow the Department of Ecology's recommended rating system for wetlands and the lack of a buffer on the City's marine shorelines does not adequately protect their functions and values. Nonetheless, TCA accepts the Planning Commission's commitment to addressing these issues in the future. He stated that TCA is concerned about the mediation because the entire City has a stake in the result. TCA is in favor of the new buffering provisions to protect daylighting for piped streams and the definition of salmonid fish use. He pointed out that the definition of stream in the proposed ordinance does reflect the Planning Commission recommendation to delete the word "open", but the CAO still includes this word.

e) Randy Bannicker, Seattle-King County Association of Realtors, urged the Council to balance all thirteen goals of the GMA in the City's CAO. He noted that buffer size is not an indication of quality. Smaller, smarter "managed" buffers will offer immediate benefit to the function and value of critical areas. The City should provide incentives for property owners to take advantage of this. He emphasized that as the City looks for an enhancement and management program for buffers that it checks to see if the program is affordable and easy to understand and that it is something a property owner can execute. He summarized that the Department of Ecology's buffer rating system is based on rural areas which are outside the Puget Sound region.

f) Patty Crawford, Shoreline, distributed two documents to the Council and City staff. She said the larger buffer simply integrates the setbacks. She said there are standards for urban development and the City is going in the wrong direction. The City needs to protect fish hatchery areas, and the City should not be adopting the CAO because it is not a consensus document. Most of the changes are in direct conflict with court orders. She noted that page 117 provides more confusion than clarity.

g) Tim Crawford, Shoreline, stated that the 10-page letter from the Washington State Department of Fish and Wildlife was solicited by his wife. He said the

entire process is flawed and cloistered. He said the City has kept state and federal agencies out of the process concerning the buffer issue.

h) Nancy Rust, Shoreline, said the functions and values of the critical areas have been damaged so the City needs to have a plan to restore the trees. The hazardous tree definition, she felt, is good and the increase of buffer widths is also good. She is in favor of adopting the proposed CAO.

i) Michelle McFadden, Wauna, expressed opposition to the ordinance. She commented that Mr. Tovar is great for the City. She felt the rewrite of the classification system completely undoes the increased buffer widths, and that the revisions will accomplish nothing. She said the Washington State Department of Fish and Wildlife has an obligation to get all of the streams out of pipes. She urged the City to take more time on this ordinance, noting it would be actionable before the Growth Management Hearings Board.

j) Elaine Phelps, Shoreline, representing Association for the Responsible Management (ARM) of Innis Arden, emphasized certain aspects of the letter sent by ARM concerning mediation. The Planning Commission, she said, has defined hazardous trees and it should not be a part of the mediation. She said ARM is concerned how the City is dealing with the CAO; the City needs overall City planning, not piecemeal solutions. She said ARM asked the Council to keep the previously removed definition of hazardous trees in the CAO. Additionally, ARM would like to see a special provision that deals with land that is excluded from development. She concluded by stating that preservation and restoration needs to take place in the areas that have been adversely affected in Shoreline.

k) Peter Henry, Shoreline, said he is not opposed to mediation, but he is concerned with the City using the outcome to influence City policy. The people in the mediation are only a small percent of the people residing in Shoreline. He urged the City Council to preserve trees as best as possible.

l) Michael Rasch, Shoreline, stated Innis Arden is a unique situation and the residents in Innis Arden thank the Council for the mediation proposal. ARM is a faction of Innis Arden and no one knows how many members they have. The Innis Arden Board appreciates the time the Council spent to consider the mediation proposal. He said he is disappointed that the stewardship plan was removed from the CAO. He emphasized that all Innis Arden residents want to see the wetlands preserved.

Councilmember Ransom moved to close the public hearing. Councilmember Gustafson seconded the motion, which carried 6-1, with Councilmember Fimia dissenting.

Deputy Mayor Jepsen moved to consider and take action on the Critical Areas Ordinance at the City Council Meeting on December 12, 2005. Councilmember Chang seconded the motion, which carried 7-0.

Councilmember Fimia felt the Council needed a process to make amendments to the CAO.

Based on the workload for the CAO, Councilmember Grace felt there should be an interim step before December 12th. The Council concurred and decided to include it on its November 28th agenda as a discussion item.

Councilmember Fimia stated she would like Mr. Tovar to look at the action the Council took on October 3rd concerning mediation and conduct a risk assessment.