

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

<p>AGENDA TITLE: Permanent Hazardous Tree Regulations: Ordinance 434 DEPARTMENT: Planning and Development Services PRESENTED BY: Matthew Torpey, Planner II Joseph W. Tovar, FAICP, Director</p>

PROBLEM/ISSUE STATEMENT:

The proposed Ordinance No. 434 repeals SMC 25.50.310.A.1 (Attachment A), which is the City's existing exemption from permit requirements for the cutting of hazardous trees. This text has been set aside since January 3, 2006 when the City Council adopted Ordinance No. 407 adopting a moratorium on this language. By that same ordinance, the City Council adopted interim controls that have been utilized during the period of moratorium. The City Council subsequently conducted a public hearing on the moratorium and interim controls, slightly amending the provisions of the critical areas regulations, and on April 10, 2006 adopted Ordinance No. 422 that extended the moratorium and interim controls to July 3, 2006. On June 26, 2006 the moratorium and interim controls were again extended to September 3, 2006 by Ordinance No. 429.

The proposed Ordinance adopts permanent regulations to replace the interim controls. The proposed permanent language is patterned on the language of the interim controls, but has been augmented with a "Statement of Purpose" section, definition of certain terms, and clarification of the procedures necessary for the City to evaluate and authorize the abatement of hazardous situations.

The provisions of the Ordinance apply to all properties in the City, including non-critical areas. However, because the code already allows property owners to entirely remove up to six healthy trees every 18 months per SMC 20.50.310.B, in most instances there would be no need for a property owner to invoke this exemption language for hazardous tree removal in non-critical areas. This text would come into play on non-critical area properties only if a property owner had reached the limit for cutting trees and was then faced with a hazardous tree situation.

FINANCIAL IMPACT:

There would be no financial impact to the City by adopting Ordinance No. 434.

PLANNING COMMISSION FINDINGS OF FACT:

On June 1, following the public hearing, the Planning Commission developed the following findings of fact:

- Some members of the public expressed support of the staff proposal, and some opposed it. Some indicated they would support the proposal if it had more stringent conditions for removal of a hazardous tree. Others indicated they would support it if it had less stringent conditions.
- The record supports the finding that removing hazardous trees has the potential to reduce hazards to human life, health and property.
- The record also supports the finding that cutting trees in steep slopes has the potential to reduce slope stability and possibly create a hazard to human life, health and property.
- The Director did communicate with and meet several times with individual citizens as well as stakeholder groups in order to hear their suggestions and concerns regarding the City's tree regulations.
- The Director broadly disseminated public notice of the availability for public review of the proposed permanent tree regulations at City Hall and on the City's website, and likewise gave public notice of scheduled review and public hearings before the Shoreline Planning Commission.
- Cutting trees anywhere in the City, inside or outside of critical areas, has the potential to degrade ecosystems and the natural environment and to alter the character of Shoreline and its treescape.
- The City of Shoreline has an obligation to develop regulations regarding tree cutting in critical areas.

The Planning Commission voted 8-1 to recommend the passage of Ordinance 434.

DISCUSSION:

The proposed code amendments, as recommended by the Planning Commission would institute several changes from the existing (pre-moratorium) hazardous tree exemption. The existing pre-moratorium hazardous tree exemption states that an applicant is to provide to a hazardous tree evaluation form and contact the City prior to tree removal, if practical. As written, there is no indication of what constitutes a hazard (i.e. target of the hazardous tree), nor is there a process that allows the City to review the proposed exemption. The proposed code amendments establishes a list of targets that a tree would have to strike in order to determine whether the tree is hazardous. Additionally, the ordinance proposes provisions that allow for the Director to review the hazard tree evaluation form, conduct a site inspection, issue approval or denial of the exemption, and establish a list of City approved arborists.

The Planning Commission conducted a workshop and public hearings on May 4, May 18 and June 1, 2006 to solicit public comment on the staff proposed changes to the existing hazardous tree regulations. All three meetings were televised on the City's channel 21. During the written public comment period, the Planning Commission received 81 written comments and heard from 24 citizens during oral comment.

Many of the comments received were directed to the staff proposed Critical Areas Stewardship Plan, as opposed to the provisions for hazardous trees. The Planning Commission was unanimous in its recommendation for denial of the proposed Critical Area Stewardship Plan amendments. Accordingly, the staff has placed in abeyance the Critical Areas Stewardship Plan provisions and will review that matter with the Council later this summer. Note that the scope of the public hearing before Council on July 10 is the hazardous tree provisions described in Ordinance 434 **only** – no public comment on the Critical Areas Stewardship Plan is timely or appropriate on July 10.

Attachment B to this report includes the minutes from the three Planning Commission meetings where the hazardous tree issue was discussed. There was a great volume of public comment. The public and Planning Commission discussion involving the hazardous tree provisions are highlighted in Attachment B for ease of Council reading.

If Ordinance 434 is adopted by Council, two administrative steps would be required of implement the approved ordinance. First, the staff is directed by Subsections 1.e of the proposed code (SMC 20.50.310) to prepare a permit exemption request form and a risk assessment form. Second, Subsection 1.h of the proposed code (SMC 20.50.310) requires an applicant for a hazardous tree exemption to use a City approved arborist. Staff intends to utilize a "request for qualifications" process in order to solicit and select a list of arborists "acceptable to the City" to conduct reviews of hazardous trees. In the interim time between passage of the ordinance and the issuance of the approved arborist list, staff will utilize the City's on-call arborist, Brian Gilles. In addition to being an arborist, Mr. Gilles is also a professional forester.

RECOMMENDATION

The Planning Commission recommends that Council approves Ordinance No. 434.

ATTACHMENTS

Attachment A: Ordinance 434

Attachment B: Planning Commission minutes from May 4, May 18, and June 1, 2006

Approved By:

City Manager



City Attorney



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ORDINANCE NO. 434

**AN ORDINANCE OF THE CITY OF SHORELINE,
WASHINGTON AMENDING THE SHORELINE MUNICIPAL
CODE TO UPDATE REGULATIONS RELATING TO TREE
CUTTING, AMENDING SMC 20.50.310 REGARDING
EXEMPTIONS FROM PERMIT REQUIREMENTS FOR
HAZARDOUS TREES**

WHEREAS, the City of Shoreline is a jurisdiction planning under the Growth Management Act and is therefore subject to the goals and requirements of Chapter 36.70A. RCW during the preparation and adoption of development regulations, including those that pertain to the cutting of trees, whether or not those trees are in a critical area designated pursuant to RCW 36.70A.170; and

WHEREAS, the Shoreline City Council adopted Ordinance No. 407 on January 3, 2006 which placed a moratorium on the use and application of SMC 20.50.310.A.1 (hazardous vegetation exemption for clearing and grading permits on private property) and adopted interim regulations to govern hazardous tree abatement; and

WHEREAS, the Shoreline City Council conducted a public hearing on February 6, 2006 to hear comment on Ordinance No. 407, after which hearing the City Council adopted Ordinance No. 411, amending Ordinance No. 407 by adding "recreational trails" to the list of potential targets to be considered when evaluating requests to cut hazardous trees; and

WHEREAS, by its terms, Ordinance 407, as amended, would have expired on May 3, 2006; and

WHEREAS, the Shoreline City Council has directed the Director of the Department of Planning and Development Services (the Director) to work with various stakeholders and interested citizens in the preparation of proposed permanent regulations to deal not only with the subject of hazardous trees, but to create a regulatory mechanism for the City to consider and potentially authorize the limited cutting of trees for the purpose of view preservation; and

WHEREAS, the Director did communicate with and meet several times with individual citizens as well as stakeholder groups in order to hear their suggestions and concerns regarding the City's tree regulations; and

WHEREAS, in preparing the proposed permanent tree regulations, it became apparent to the Director that additional time would be necessary to circulate the proposal for public review and comment prior to a public hearing before the Shoreline Planning Commission; and

WHEREAS, the Shoreline City Council conducted a public hearing on April 10, 2006 on the subject of whether to extend for an additional two months the moratorium adopted by Ordinance 407, as amended, after which the City Council adopted Ordinance No. 422 to extend the effective date of the moratorium to July 3, 2006; and

WHEREAS, the Director broadly disseminated public notice of the availability for public review the proposed permanent tree regulations at City Hall and on the City's website, and likewise gave public notice of scheduled review and public hearings before the Shoreline Planning Commission; and

WHEREAS, the Shoreline City Council conducted a public hearing on June 26 2006 on the subject of whether to extend the moratorium adopted by Ordinance No. 407, as amended, after which the City Council adopted Ordinance No. 429 to extend the effective date of the moratorium to September 2, 2006

WHEREAS, the Shoreline Planning Commission conducted a study session workshop on the proposed permanent regulations on May 4, 2006 and conducted a public hearing on May 18, 2006 and June 1, 2006; after which the Commission forwarded a recommendation to the City Council;

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

Section 1. Amendment. SMC 20.50.310. is hereby amended to read as follows:

20.50.310 Exemptions from permit.

A. Complete Exemptions. The following activities are exempt from the provisions of this subchapter and do not require a permit:

1. Emergency situation on private property involving danger to life or property or substantial fire hazards. ~~Any tree or vegetation which is an immediate threat to public health, safety, or welfare, or property may be removed without first obtaining a permit regardless of any other provision contained in this subchapter. If possible, trees should be evaluated prior to removal using the International Society of Arboriculture method, Hazard Tree Analysis for Urban Areas, in its most recent adopted form. The party removing the tree will contact the City regarding the emergency, if practicable, prior to removing the tree.~~
- a. Statement of Purpose – Retention of significant trees and vegetation is necessary in order to utilize natural systems to control surface water runoff, reduce erosion and associated water quality impacts, reduce the risk of floods and landslides, maintain fish and wildlife habitat and preserve the City's natural, wooded character. Nevertheless, when certain trees become unstable or damaged, they may constitute a

hazard requiring cutting in whole or part. Therefore, it is the purpose of this section to provide a reasonable and effective mechanism to minimize the risk to human health and property while preventing needless loss of healthy, significant trees and vegetation.

- b. For purposes of this section, "Director" means the Director of the Department of Planning and Development Services and his or her designee.
- c. In addition to other exemptions of Subchapter 5 of the Development Code, SMC 20.50.290-.370, a permit exemption request for the cutting of any tree that is an active and imminent hazard (i.e., an immediate threat to public health and safety) shall be granted if it is evaluated and authorized by the Director under the procedures and criteria set forth in this section.
- d. For trees that pose an active and imminent hazard to life or property, such as tree limbs or trunks that are demonstrably cracked, leaning toward overhead utility lines, or are uprooted by flooding, heavy winds or storm events, the Director may verbally authorize immediate abatement by any means necessary.
- e. For hazardous circumstances that are not active and imminent, such as suspected tree rot or diseased trees or less obvious structural wind damage to limbs or trunks, a permit exemption request form must be submitted by the property owner together with a risk assessment form. Both the permit exemption request form and risk assessment form shall be provided by the Director.
- f. The permit exemption request form shall include a grant of permission for the Director and/or his qualified professionals to enter the subject property to evaluate the circumstances. Attached to the permit exemption request form shall be a risk assessment form that documents the hazard and which must be signed by a certified arborist or professional forester.
- g. No permit exemption request shall be approved until the Director reviews the submitted forms and conducts a site visit. The Director may direct that a peer review of the request be performed at the applicant's cost, and may require that the subject tree(s) vegetation be cordoned off with yellow warning tape during the review of the request for exemption.
- h. Approval to cut or clear trees may only be given upon recommendation of the City approved arborist that the condition constitutes an actual threat to life or property in homes, private yards, buildings, public or private streets and driveways, sidewalks, recreational trails, improved utility corridors, or access for emergency vehicles and any trail as proposed by the property owner and approved by the Director for purposes of this section.
- i. The Director shall authorize only such alteration to existing trees and vegetation as may be necessary to eliminate the hazard and shall condition authorization on means and methods of removal necessary to

minimize environmental impacts, including replacement of any significant trees. All work shall be done utilizing hand-held implements only, unless the property owner requests and the Director approves otherwise in writing. The Director may require that all or a portion of cut materials be left on-site.

2. Removal of trees and/or ground cover by the City and/or utility provider in situations involving immediate danger to life or property, substantial fire hazards, or interruption of services provided by a utility. The City retains the right to dispute the emergency and require that the party obtain a clearing permit and/or require that replacement trees be replanted as mitigation.
 3. Installation and regular maintenance of public utilities, under direction of the Director, except substation construction and installation or construction of utilities in parks or environmentally sensitive areas.
 4. Cemetery graves involving less than 50 cubic yards of excavation, and related fill per each cemetery plot.
 5. Removal of trees from property zoned RB and I, CB and NCB, and NB and O, unless within a critical area of critical area buffer.
- B. Partial Exemptions. With the exception of the general requirements listed in SMC 20.50.300, the following are exempt from the provisions of this subchapter, provided the development activity does not occur in a critical area or critical area buffer. For those exemptions that refer to size or number, the thresholds are cumulative during a 36-month period for any given parcel:
1. The removal of up to six significant trees (see Chapter 20.20 SMC, Definitions) and associated removal of understory vegetation from any property.
 2. Landscape maintenance and alterations on any property that involves the clearing of less than 3,000 square feet, or less than 1,500 square feet if located in a critical drainage area, provided the tree removal threshold listed above is not exceeded.

Section 2. Repeal. Ordinance No. 429 extending a moratorium and interim controls on hazardous tree removal is repealed upon the effective date of this ordinance.

Section 3. Effective date. A summary of this ordinance consisting of its title shall be published in the official newspaper of the City and the ordinance shall take effect and be in full force five (5) days after the publication date.

APPROVED BY THE CITY COUNCIL THIS _____ DAY OF JULY, 2006.

Robert L. Ransom, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott Passey, CMC
City Clerk

Ian Sievers
City Attorney

Date of Publication: July ____, 2006

Effective Date: July ____, 2006

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CITY OF SHORELINE

SHORELINE PLANNING COMMISSION SUMMARY MINUTES OF REGULAR MEETING

May 4, 2006
7:00 P.M.

Shoreline Conference Center
Mt. Rainier Room

COMMISSIONERS PRESENT

Chair Piro
Vice Chair Kuboi
Commissioner Broili
Commissioner Harris
Commissioner Phisuthikul
Commissioner McClelland
Commissioner Pyle
Commissioner Wagner

STAFF PRESENT

Joe Tovar, Director, Planning & Development Services
Steve Cohn, Senior Planner, Planning & Development Services
Matt Torpey, Planner II, Planning & Development Services
Jessica Simulcik Smith, Planning Commission Clerk

COMMISSIONERS ABSENT

Commissioner Hall

CALL TO ORDER

Chair Piro called the regular meeting of the Shoreline Planning Commission to order at 7:02 p.m.

Chair Piro explained that the main item on the agenda is a study session on the Permanent Hazardous Tree Regulations and Critical Areas Stewardship Plan. Staff would provide a formal briefing on the issue to the Commission, and no oral comments would be accepted from the public on this item. While the Commissioners would have an opportunity to ask questions related to the briefing, they would not be discussing or deliberating the proposal now. A public hearing on the issue has been scheduled for May 18th.

ROLL CALL

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

Because the meeting was being videotaped for television broadcast, Chair Piro invited the Commissioners to briefly introduce themselves.

APPROVAL OF AGENDA

Chair Piro suggested that they have only a brief Director's Report at the beginning of the meeting to focus on the topic of the study session. The remainder of the report could be provided later on the agenda. He also suggested that Reports from Committees and Commissioners be placed after the study session, as well. The Commission accepted the agenda as amended.

DIRECTOR'S REPORT

Mr. Tovar advised that he would wait until after the study session has been completed to provide his report.

APPROVAL OF MINUTES

The minutes of April 6, 2006 and April 20, 2006 were approved as corrected.

GENERAL PUBLIC COMMENT

Chair Piro acknowledged the presence of Council Members Way and McGlashan.

There was no one in the audience who expressed a desire to address the Commission during this portion of the hearing.

STAFF REPORTS

Study Session on Permanent Hazardous Tree Regulations and Critical Areas Stewardship Plan

Mr. Tovar briefly explained the working relationship and roles of the City Council, Planning Commission and City Staff. He said it is important for the public to understand that the staff works with the City Council and Planning Commission as a team to accomplish the shared mission of serving the citizens of Shoreline and protecting their quality of life. The City Council members have been elected by the citizens to adopt plans, budgets, and regulations. They are the policy makers. The Planning Commissioners are the policy advisors and have been appointed by the City Council to serve the function of reviewing materials, listening to public comments, deliberating on the issues and making recommendations to the City Council. Staff is charged with the responsibility of making recommendations to the Planning Commission. Once the Planning Commission forwards a recommendation to the City Council and a final decision has been made, staff becomes the administrator of the adopted policy.

Mr. Tovar advised that staff has an obligation to provide the Commission with their best professional recommendation, keep them apprised of what is going on in the community, etc. While the Commission

does not have to agree with the staff's recommendation, they have an obligation to consider it, along with all other input from applicants, the public, and others. The Commission has an obligation to provide a timely, thorough recommendation to the City Council, and the City Council has an obligation to give fair and full consideration to the Commission's recommendation and then make a decision. The City Council is not obligated to agree with a Commission recommendation.

Mr. Tovar provided a chart to illustrate the differences between administrative actions, quasi-judicial actions, and legislative actions. Administrative actions such as short plats, building and grading permits, etc. are reviewed by staff using the existing codes. For quasi-judicial land use actions such as site-specific rezones, conditional or special use permits, etc. a public hearing is conducted by the Planning Commission. The Planning Commission reviews all of the codes and policies and all of the evidence and forwards a recommendation to the City Council, who makes the final decision. Legislative items such as development code and comprehensive plan amendments, rezones, etc. are reviewed by the Planning Commission and a public hearing is held as part of that process. The Planning Commission weighs all of the evidence and forwards a recommendation to the City Council.

Mr. Tovar emphasized that the public only has a limited ability to provide input on administrative actions. For example, the staff's discretion to approve or deny a building application is limited by the current building code requirements, so the impact of public comment would be small. However, the Commission and City Council have more discretion with quasi-judicial matters so the public's input could have more impact on the final decision. Legislative actions allow the most discretion, so the public has the greatest ability to participate in the process and impact the end result. He summarized that the level of public testimony depends upon the nature of the action. He pointed out that the proposal before the Commission at this time (Permanent Hazardous Tree Regulations and Critical Areas Stewardship Plan) is a legislative action. Thus, the public has a significant opportunity to provide comments to guide the Commission and City Council's decision.

Mr. Tovar explained that in January of 2006, the City Council adopted a moratorium on the Development Code's hazardous tree regulations. In addition, the Council adopted interim regulations to explain what would happen in hazardous tree situations while the moratorium was in place. The moratorium and interim regulations expires on July 3, 2006. The City Council asked the Planning Commission to consider permanent regulations to replace the interim control and forward a recommendation to them for final adoption. They also asked the Commission to amend the code to provide an opportunity for a Critical Areas Stewardship Plan.

Mr. Tovar announced that a public hearing has been scheduled for May 18th, and citizens have already started providing written comments that would be forwarded to the Commission prior to the public hearing. If the Commission develops a recommendation to the City Council by the end of its meeting on May 18th, the City Council could take final action before the July 3rd deadline. However, if the Commission needs more time, they could direct staff to approach the City Council with a request that the moratorium be extended.

Mr. Tovar displayed the text contained in the draft ordinance (Attachment 2 of Staff Report). He noted that the proposed ordinance would repeal the existing language and adopt new language for the

Hazardous Tree Regulations found in Section 20.50.310 of the Shoreline Municipal Code (SMC). It would also add a new section SMC 20.80.087 that would provide for City review and approval of Critical Areas Stewardship Plans. The new language for 20.50.310 is modeled after the interim control. The City Council conducted a public hearing regarding the interim ordinance, and staff has received comments from a number of citizens, as well. Mr. Tovar briefly reviewed the proposed language for this section regarding hazardous trees (Pages 2 through 4 on Attachment 2 of the Staff Report) and invited the Commission to ask questions.

Commissioner McClelland suggested that the language provide a definition of the word "abatement," which is used in Section 1.e. Mr. Torpey referred to SMC 20.20.010, where the word "abate" is defined. Next, Commissioner McClelland referred to Section 1.i and asked if the term "vegetation" includes trees, too. Mr. Tovar agreed that "trees" should be added to this section. Commissioner McClelland also suggested it would be helpful to provide a definition for the word "vegetation."

Commissioner Broili referred to Section 1.i and suggested that the term "recreational trails" be defined. Mr. Tovar agreed that staff would come up with a definition for this term.

Commissioner Wagner asked how many hazardous tree forms the staff anticipates receiving each year. Mr. Torpey said that under the old regulations, the staff processed over 100 hazardous tree forms in an 8-month period. However, since the interim control went into effect on January 3rd, they have only processed two. Commissioner Wagner asked how much time staff anticipates the Director would spend on site visits, and suggested the issue of time be part of the Commission's consideration.

Commissioner Wagner referred to Section 1.j and asked if there is a set standard to enable the City to make sure a property owner used hand-held equipment. Mr. Tovar explained that if a property owner requested to use something other than hand-held equipment, staff would expect him/her to explain where the larger equipment would be placed, why it must be used, and what the impacts would be to the surrounding area. These situations would be determined on a case-by-case basis.

Commissioner Wagner asked if the City has a definition for the term "significant trees," which is used in Section 1.j. Mr. Torpey shared the City's current definition for "significant trees."

Commissioner Pyle asked that staff provide the Commissioners with a copy of the hazardous tree form, which is mentioned in several places in the proposed language. He also requested a copy of the code section that discusses code enforcement. Mr. Tovar agreed that staff could provide more information about code enforcement at the next meeting. The Commission could then decide if additional language regarding code enforcement would be necessary.

Commissioner Pyle questioned why Section 1.j would only require the replacement of significant trees and not significant vegetation, too. He pointed out that, in many cases, the under story canopy is as important as the primary canopy.

Vice Chair Kuboi agreed that the term "recreational trail" should be better defined. He would like the definition to identify how long a trail must exist before it could obtain the status of "recreational trail."

He expressed his concern that if the term “recreational trail” could be used as a definition for creating a hazard, it would be simple for a property owner to put in a trail, and the intent of the language could be distorted.

Vice Chair Kuboi referred to Section 1.g, which lists a “registered landscape architect” as a person who could address whether a tree is hazardous or not. He asked staff to research whether the typical landscape architect would have this particular professional judgment. Commissioner Broili agreed with Vice Chair Kuboi’s concern about whether or not a landscape architect would be qualified to conduct risk assessment on potentially hazardous trees.

Vice Chair Kuboi pointed out that the proposed language would not provide any avenue for a citizen with a precarious tree in a hazardous area to “cut first and ask questions later.” At the very minimum, the citizen would have to contact the Customer Response Team, and obtain verbal approval. Mr. Tovar pointed out that this would only be true for hazardous trees within a critical area. Vice Chair Kuboi asked how the average citizen would know that he/she must get permission to cut a tree in a critical area. Mr. Tovar recalled that staff has talked with the Commission and City Council about the concept of developing a greater awareness amongst the public about the natural systems in the City. The goal would be to cultivate a stewardship for the community through activities and programs, but even that would not provide citizens with a perfect knowledge of what the rules are.

Mr. Tovar said Vice Chair Kuboi raised the question of why the Critical Areas Stewardship Plan language specifies the Olympic Mountains and Puget Sound views as opposed to other types of views. Mr. Tovar reminded the Commission that last year they received a recommendation from an organization asking that the Commission specifically acknowledge the views of the Olympic Mountains and the Sound. The Commission would have to make a policy decision on whether or not views should be limited to just these two views.

Mr. Tovar briefly reviewed the proposed language for SMC 20.80.87 regarding Critical Areas Stewardship Plans. He explained that the purpose of a stewardship plan is to provide a mechanism for the City to comprehensively review and approve, deny, or approve with conditions, private proposals to manage, maintain, cut and/or restore trees, other vegetation, natural resources and trails in large critical areas of the City. The proposed language would also provide a regulatory tool for the City to make a reasonable accommodation for private view rights in view-covenanted communities while still meeting the over-arching statutory mandate to protect critical areas.

Mr. Tovar said that up to this point, the cutting of trees in critical areas has not been permitted by the City unless they are considered hazardous, which is fairly consistent with the critical areas regulations adopted by other jurisdictions in the area. He recalled that last August, the Innis Arden Club submitted a recommendation that would allow non-hazardous trees to be cut to preserve views if certain conditions and requirements could be met. However, the Commission chose not to forward the recommendation on to the City Council for consideration.

Mr. Tovar said it is important for the Commission to carefully sort out the purpose of having a Critical Areas Stewardship Plan Ordinance, since it would drive the details of what would be required to be

submitted, how proposed plans would be evaluated, etc. He emphasized that it is not mandatory that the Commission forward a recommendation regarding the stewardship plan language to the City Council at the same time as the hazardous tree ordinance language.

Mr. Tovar reviewed the proposed language for SMC 20.80.87 (Pages 4 and 5 on Attachment 2 of Staff Report) and invited the Commissioners to ask questions. He particularly referred to Sections 3.a, 3.b and 3.c and explained that the Critical Areas Ordinance does not require that critical areas be left untouched. Instead, it requires that there be no net loss to the functions and values of the critical areas. He explained that the definition of a critical area is an "ecosystem," which is defined as a system made up of a number of pieces that interrelate. When determining the function and value of an ecosystem, the larger the area considered, the greater chance of accounting for all of the parts of the ecosystem. He noted that Section 3.d refers to the interplay between the water, soil, plant materials, habitat value, etc. Section 3.e provides a mechanism for ensuring compliance with the provisions and that the information submitted is accurate.

Mr. Tovar referred to Section 5, which lists the items that must be included in a Critical Areas Stewardship Plan. He specifically referred to Section 5.c which would require an applicant to break up the property into logical sub units and provide a narrative description about how they would manage each one. He also referred to Section 5.f, which he discussed significantly with the City Attorney. He explained that under the provisions of the stewardship plan, certain representations are being made about how plans would be managed, what would happen to the lay of the land, plant materials, circulation on the site, and other details. These issues merit some type of ongoing review; and at some point, it might be warranted for the City to go onto the property to make sure all is going per the approved conditions and approved plan. Section 5.f would grant the City this legal authority.

Commissioner Phisuthikul referred to Section 5.a, which uses the term "known watercourses." He noted that many important watercourses and wetlands might not be known. He suggested that this language be clarified using terms that have already been defined in the code. Also in this section, in accordance with the Commission's previous discussion, Commissioner Wagner asked that the term "significant vegetation" be changed to "significant trees and/or vegetation."

Commissioner Broili said he would like staff to create a definition for view, even though it might be difficult to do. Also, instead of just an inventory of significant vegetation, he would like Section 5.a to require an inventory of all existing vegetation. He pointed out that there might be some undesirable vegetation that should be removed and/or replaced. In addition, he asked if the scientific assessment by a qualified professional (Section 5.d) would be peer reviewed.

Commissioner Broili said he would like the language to include some provision for an adaptive management strategy so that plans could become better in the future. He agreed to work with staff to define the term "adaptive management strategy" and consider how it could be incorporated into the proposed language.

Mr. Tovar cautioned that defining the word “view” is difficult to address in regulations and permits. If the Commission talks about views, they must seek help from the public to understand exactly what views the public is talking about. This is a policy issue the Commission must grapple with.

Commissioner Pyle asked if it would be possible for people to register their views as a benchmark. He noted that the Department of Ecology has developed a number of tools that document functions and values. He suggested that adopting a formal system for assigning, assessing or valuing the landscape would enable the City to stay on track as far as target results.

Commissioner Pyle said that while he understands the benefits of “native vegetation,” (Section 3.d) the City is working in very specific circumstances where native vegetation would never really be allowed to mature. Views are being blocked as a result of growth of the native vegetation. He explained that there are quite a few species that could provide the same functions, but mature at a level that won’t block views in the future. Mr. Tovar advised that the Commission is likely to receive a lot of public testimony regarding the issue of native vegetation, and they would be required to make a policy decision about what the standard of vegetation should be and how it should be managed.

Commissioner Pyle referred to Section 5.a and asked if the dated inventory would require a survey. Mr. Tovar said they need a document that is empirically correct and reflects reality, but he is not sure a survey should be required. He said staff would consider the matter further and provide a response later.

Commissioner McClelland asked if it would be possible for Section 5.a to require a data inventory of known critical areas. The language could then list the five types of critical areas. She recalled that when this issue was reviewed last year, a concern was raised that anything such as a stewardship plan should be within the context of the state’s definition of a critical area. She also asked if it would be possible to make reference to “best available science” in Section 5.d. She stressed the importance of emphasizing throughout the document that the provisions deal with critical areas. She asked if the proposed ordinance could include language to describe what would happen if a stewardship plan failed to perform. Mr. Tovar said staff would provide further information and recommendations at the next meeting regarding enforcement of the ordinance language.

Commissioner McClelland suggested that the word “submittal” in Section 2 be changed to “approval.” She noted that there could be a time lag between when a plan is submitted and when it is approved. Mr. Tovar said the Commission will likely hear testimony that the City should consider views from the remote past out to the remote future and all points in between. The Commission will have to make a policy decision on this matter.

Commissioner McClelland asked if staff has a copy of the Department of Ecology’s outline for preparing restoration plans. She suggested that this document could be extremely useful. Mr. Tovar agreed.

Vice Chair Kuboi pointed out that the purpose statement implies that the ordinance would only apply to view covenanted properties. Mr. Tovar agreed. Vice Chair Kuboi asked if it would be possible for a

person to create a single-lot, view covenanted community. He questioned whether it would be appropriate for the City to treat a community that has covenants differently than one that does not.

Vice Chair Kuboi referred to Section 3.a and inquired if the 10 acres would have to be contiguous. Chair Piro pointed out that Section 3.b states that stewardship plans may include non-contiguous parcels under the same ownership. Vice Chair Kuboi asked if it would be possible for an owner to have parcels fragmented throughout the City that aggregate to 10 acres. Mr. Tovar answered affirmatively, but explained that if such a plan were submitted, it would be difficult for the applicant to describe the ecosystem.

If the proposed language were adopted, Vice Chair Kuboi questioned if an approved stewardship plan would be effective in perpetuity. Mr. Tovar clarified that while they call it a plan, it is really a permit or regulatory tool that authorizes or controls certain activities into the future. As proposed, the plan would have an infinite life, unless conditioned otherwise. Vice Chair Kuboi expressed his concern that once the City approves a stewardship plan and the party implements the plan, there would be no avenue for the City or the property owner to get out of the deal. He pointed out that, in most cases, the applicants would receive the immediate benefit and the payback to the City would occur over a long-period of time. Therefore, it would be important to have a mechanism in place to make sure that all parties in the plan follow through with their obligations. Mr. Tovar asked that staff be allowed to consider these concerns and provide some different scenarios for the Commission to consider as part of the Staff Report for May 18th.

Vice Chair Kuboi pointed out that Section 5 only describes what information is to be included in the submittal package for application. It does not identify the elements that must be included in the actual stewardship plan, itself. Mr. Tovar agreed that more language could be provided to describe what must be included in the approved plan. His understanding is that the approved plan would be based on the information that is submitted, as well as any additional conditions or modifications that might be imposed by the City.

Commissioner Broili recalled that he and Commissioners Hall and Phisuthikul toured the Reserves during a major rainstorm. There was a significant amount of runoff coming from the streets and other properties into the reserves. While Sections 3.b and 5.a address the issue of hydrology, he suggested they must also address the impacts from the built environment surrounding or adjacent to the critical areas.

Commissioner Broili suggested that instead of outlining the elements that must be included in a stewardship plan, the language should state the desired outcome of a plan. Just stating what must be included in the plan does not allow for more creative solutions as best available science improves or adaptive management comes into play. Mr. Tovar suggested that a new Section 6 be added to explain what an approved stewardship plan must include, including how surface water would be managed.

Commissioner Pyle suggested that Section 1 be clarified to identify who would be able to apply for a stewardship plan. As written, no one would be prohibited from applying for a stewardship plan. Mr. Tovar agreed to rework the purpose statement. Commissioner Pyle asked how the City properties have

been impacted by the regulation that only allows six significant trees to be removed during any three-year period. He questioned if a stewardship plan could be utilized by the City's Parks Department as a tool to manage their critical areas, as well.

Chair Piro referred to Section 4 and asked if a distinction could be made between parcels in a covenanted community that are held in private ownership as opposed to joint community ownership. Mr. Tovar said the way the language has been proposed, it would not matter who owns the property, as long as everyone who has some ownership interest signs as an applicant.

Chair Piro asked if the term 'view-covenanted communities' would refer to only view covenanted communities that have provisions in their covenant that define view. Mr. Tovar agreed that a definition for "view" must be discussed further by the staff and Commission. They would also need to discuss the concept of covenants further.

Commissioner Wagner referred to Section 4. She asked if the permit would stay with the property if ownership changed. Mr. Tovar answered affirmatively.

Because the language would allow stewardship plans for non-contiguous parcels, Commissioner Wagner asked if the ecosystem on the properties lying between the parcels that are part of the permit would have to be addressed, as well. Mr. Tovar referred to Item 3.d, which would mandate that all of the significant attributes on properties immediately adjacent to the subject property be disclosed and evaluated, as well. Not only must applicants describe the properties they own that would be part of the permit, they must also describe the ecosystem on adjacent critical areas.

Mr. Tovar said that if the Commissioners have additional questions they would like staff to answer on May 18th, they should forward them to Mr. Torpey by May 10th. Mr. Torpey would also collect all written public comments submitted prior to the hearing. In addition, a separate web page has been established for this particular item, and comments could be forwarded to him via this website. He also provided his mailing address.

Vice Chair Kuboi asked if all of the property within the minimum 10 acres included as part of the permit must be critical areas. Mr. Tovar agreed that the proposed language does not make this clear. Vice Chair Kuboi inquired if part of the property included as part of the application could be located outside of the City of Shoreline. Mr. Tovar answered that the City would not be able to issue a permit for property outside of Shoreline. However, a SEPA review would be required for any stewardship management plan permit. If the subject property is located along the City boundary, the SEPA review would include an analysis of impacts to the ecosystem outside of the City's jurisdiction, as well. He said staff could attempt to make this language clearer.

Vice Chair Kuboi asked if a plan would have to be reevaluated if the functions and values of a parcel outside of the area covered by the stewardship plan changed. Mr. Tovar said this would all depend on the type of change. In some cases, practices and requirements that were in place prior to the change might no longer make sense, and it might be appropriate to come up with some other provisions or

requirements. He suggested that the Commission must discuss how and if the plan could be adapted in the future, if necessary.

Vice Chair Piro reminded the public and Commissioners that the May 18th meeting would be a formal public hearing on the proposals relating to the Hazardous Tree Regulations and Critical Areas Stewardship Plans. He emphasized that the Commission welcomes both written and oral comments from the citizens, and written comments should be submitted by May 10th, if possible, so they can be included in the Commission's packets. Written comments that are received after May 10th would also be shared with the Commission, but not before the hearing starts.

CONTINUED DIRECTOR'S REPORT

Mr. Tovar reported on the City Council's recent retreat, where they reviewed their goals for the City. They started with about 30 potential goals, and narrowed the number down to 17. They are planning to schedule two public town hall meetings in June to solicit public input regarding the potential goals. The City Council's intent is to create a revised set of goals for 2006 and 2007.

Vice Chair Kuboi asked if the City Council provided any amended direction regarding the City's future effort to create a comprehensive housing strategy. Mr. Tovar said the development of a housing strategy was included on the City Council's list of 17 potential goals. Whether identified as a goal or not, comprehensive housing strategies would still be considered part of the staff and Commission's work program. The City Council did not specifically discuss details surrounding this effort, so staff must still seek further direction from them on how to proceed.

Mr. Tovar referred to the Commission Agenda Planner. He noted that a public hearing and additional Commission discussion on the Hazardous Tree Regulations and Critical Areas Stewardship Plans has been scheduled for May 18th. If the Commission needs more time to make a recommendation to the City Council, they could discuss the issue further in June and staff could ask the City Council to extend the moratorium. He reviewed that the June 1st meeting has been scheduled as a joint meeting with the Parks Board to discuss the concept of Urban Forest Management. A speaker from Cascade Land Conservancy would also provide a presentation on June 1st to discuss how activities in Shoreline might relate to what is going on in the region. If time allows, he would also provide a report on "form-based zoning."

Mr. Tovar further reported that two site-specific rezone public hearings have been scheduled for June 15th. In addition, the Assistant City Manager would be present to speak to the Commission regarding their July 20th retreat agenda. A joint Planning Commission/City Council/Park Board meeting has been scheduled for June 29th. At that meeting, the Assistant City Manager and Human Resources Manager would provide training on the "communication styles methodology" that is used within the City organization. Two rezone public hearings have tentatively been scheduled for July 6th, as well as a tentative workshop on potential development code amendments. No meetings have been scheduled for the month of August.

REPORTS OF COMMITTEES AND COMMISSIONERS

Chair Piro announced that the Puget Sound Regional Council is working on an update of the Vision 20/20 document, which is the growth, transportation and economic development strategy for the four-county region. A public event has been scheduled for May 23rd in McCaw Hall at the Seattle Center to kick off the release of a draft Environmental Impact Statement that provides four different alternatives for how the region, including the City of Shoreline, King County and neighboring cities, would accommodate the 1.6 million additional people that are anticipated by the year 2040. More information is available at www.psrc.org. He advised that the Planning & Development Services and Public Works Directors are receiving direct information regarding this event, as are the elected officials. He encouraged Commissioners and fellow citizens to participate, as well.

UNFINISHED BUSINESS

There was no unfinished business scheduled on the agenda.

NEW BUSINESS

Chair Piro noted that the City Council would formally acknowledge the service of two former Planning Commissioners (Don Sands and Bill MacCully) at their meeting on May 8th. He encouraged the Commissioners to notify the staff of their plans to attend.

AGENDA FOR NEXT MEETING

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

ADJOURNMENT

The meeting was adjourned at 9:35 p.m.

Rocky Piro
Chair, Planning Commission

Jessica Simulcik Smith
Clerk, Planning Commission

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CITY OF SHORELINE

SHORELINE PLANNING COMMISSION SUMMARY MINUTES OF REGULAR MEETING

May 18, 2006
7:00 P.M.

Shoreline Conference Center
Mt. Rainier Room

COMMISSIONERS PRESENT

Chair Piro
Vice Chair Kuboi
Commissioner Broili
Commissioner Harris
Commissioner Phisuthikul
Commissioner McClelland
Commissioner Pyle
Commissioner Wagner
Commissioner Hall (arrived at 7:05 p.m.)

STAFF PRESENT

Joe Tovar, Director, Planning & Development Services
Steve Cohn, Senior Planner, Planning & Development Services
Matt Torpey, Planner II, Planning & Development Services
Ian Sievers, City Attorney
Jessica Simulcik Smith, Planning Commission Clerk

CALL TO ORDER

Chair Piro called the regular meeting of the Shoreline Planning Commission to order at 7:03 p.m.

ROLL CALL

Upon roll call by the Commission Clerk, the following Commissioners were present: Chair Piro, Vice Chair Kuboi, Commissioners Broili, Harris, Phisuthikul, McClelland, Pyle and Wagner. Commissioner Hall arrived at 7:05 p.m.

APPROVAL OF AGENDA

The agenda was approved as submitted.

DIRECTOR'S REPORT

Mr. Tovar reported that on May 16th, Shoreline voters approved the City's first park bond levy of \$18.5 million. This bond money would be used to purchase open space properties, make park improvements and develop trails in the City.

Mr. Tovar announced that the concrete girders for the Interurban Trail bridges across Aurora Avenue North would be installed on May 19th. Aurora Avenue North would be closed from 7 p.m. on May 19th until 6 a.m. on May 20th.

Mr. Tovar advised that two town hall meetings have been scheduled in June, for the purpose of allowing citizens an opportunity to provide input to the City Council regarding the City's 2006 and 2007 goals. The first meeting has been tentatively scheduled for June 8th at the Museum, and the second meeting has been scheduled for June 14th at the Shoreline Center. He noted that final dates would be confirmed within the next week, and copies of the City Council's 17 draft goals would be posted on the City's website prior to the meetings.

APPROVAL OF MINUTES

The minutes of May 4, 2006 were approved as drafted.

GENERAL PUBLIC COMMENT

Bob Barta, 15703 – 1st Avenue Northwest, thanked Commissioner Harris, Commissioner Hall, Mr. Tovar, Mr. Cohn and Mr. Torpey for attending the Highland Terrace Neighborhood Meeting on April 18th. He said the Neighborhood's goal is to help the Planning Commission and Planning Department survey the housing needs over the next 20 years. He referred to their website www.highland-terrace.org, which invites the Commissioners, staff, and citizens to submit survey questions that could help reveal the future housing needs. The website also provides good emergency management and preparedness information. Chair Piro said the Commission welcomes the opportunity to attend the various neighborhood meetings.

PUBLIC HEARING ON PERMANENT HAZARDOUS TREES REGULATIONS AND CRITICAL AREAS STEWARDSHIP PLANS

Chair Piro reviewed the rules and procedures for the legislative public hearing. He noted that the Commission recently revised their public hearing procedures to keep the hearing open until after their deliberation process has been completed and just prior to taking formal action.

Staff Overview and Presentation of Preliminary Staff Recommendation

Mr. Tovar advised that the subject of the public hearing is twofold: proposed amendments related to the City's regulations that govern hazardous trees and the creation of a new permanent process called Critical Areas Stewardship Plans. He noted that the provisions regarding the cutting of hazardous trees would apply throughout the City, whether the land includes critical areas or not. However, the Critical Areas Stewardship Plan provisions would only apply on lands identified as critical areas.

Mr. Tovar reported that the Commission received a copy of all written testimony (Items 1-28) received prior to the staff report. In addition, staff provided copies of the additional written testimony (Items 29-45) received subsequent to the Staff Report. Any written comments submitted by citizens during the meeting should be forwarded to the Commission Clerk so they can be entered as part of the comment log.

Mr. Tovar explained that the Staff draft amendments constitute their preliminary recommendation on the regulations, but they would like an opportunity to present a final recommendation after all public testimony has been provided. He reviewed that numerous written comments were received regarding the issue of covenants, and the Commission would likely hear more. He said the staff's position is that private covenants are "private." The City does not create or enforce covenants, and the City is not bound by covenants. However, the City could take notice of covenants, and they may become the basis for policy decisions the City Council or Planning Commission might consider when crafting regulations such as the Critical Areas Stewardship Plan.

Questions by the Commission to Staff

None of the Commissioners raised questions regarding the staff's initial comments and recommendation.

Public Testimony or Comment

Mike Jacobs, 18301 – 8th Northwest, Innis Arden Club President, said the Innis Arden Board disagrees with Mr. Tovar's comment that the City is not bound by private covenants. He pointed out that in the preamble to the proposed legislation, reference is made to considering the goals and objectives of the Growth Management Act (GMA); and one of the goals of the GMA is to protect private property rights. This goal was recently reiterated by a 2005 Supreme Court decision involving a development that is directly north of Innis Arden that was also developed by the Boeings. In addition, a Court of Appeals decision in 1992 upheld the King County Superior Court's decision that the Innis Arden view covenants were valid and legally enforceable. He further noted that this decision indicated that protection of the area's view would be reasonable, and such views are and always have been one of the principal attractions of the Innis Arden Development.

Mr. Jacobs expressed his belief that the proposed legislation would not respect the private covenants of Innis Arden. He referred to a letter from the Innis Arden Club's Attorney, which states that the proposed legislation would destroy 50 years of private property rights in this neighborhood. With respect to hazardous trees, Mr. Jacobs said he finds the proposed process very cumbersome and unwieldy. He specifically referred to Provision h (Page 3, Attachment B), and said the Club believes a peer review by other professionals would be unnecessary and result in duplicated costs. Instead, the City should simply establish a list of qualified arborists who can perform inspections to determine if trees are hazardous.

Mr. Jacobs said that while the proposed Critical Areas Stewardship Plan language professes to make a reasonable accommodation for view rights in a covenanted community, it really does just the opposite. The proposed language would only allow for views at the time the plan was submitted, and this would violate established law that the Innis Arden covenants protect views that were present when the neighborhood was platted in the 1940's. He expressed his concern that the proposed language would put Innis Arden and the City on a collision course. He asked that the Commission allow the Club representatives to work with the staff to come up with more appropriate regulations.

Mr. Jacobs referred to the requirement that a Critical Areas Stewardship Plan must encompass a minimum of 10 acres, which would preclude any private homeowner from attempting to reclaim his/her view. He asked that the Commission consider the elimination of this requirement. He also referred to Item 3.d (Page 5, Attachment B), which talks about the restoration of streams, etc. He pointed out that

because this could cost millions of dollars, it is simply impractical and makes the plan unworkable. Mr. Jacobs urged the Commission to reject the proposed legislation and send it back to the staff for additional work.

Commissioner Broili asked Mr. Jacobs to define what he considers to be a "view." Mr. Jacobs said "view" is defined in the Innis Arden Covenants as views of Puget Sound or the Olympic View Mountains. Commissioner Broili inquired if the Club's definition would call for an unobstructed view only. Mr. Jacobs answered that the private covenants provide that trees be kept to roof height on private properties. If the trees exceed roof height and obstruct Sound and mountain views for adjoining parcels, they are in noncompliance with the private covenants. While there is no specific marker for tree height in the reserves, they have obtained legal opinions that the reserves are subject to the Innis Arden Covenants. The community believes they have the right to manage the reserves for both safety and view, but this does not mean clear cutting.

Commissioner Pyle asked if the Innis Arden Club has historic photographs to illustrate what the neighborhood looked like when it was originally established. Mr. Jacobs said the Club could provide photographs showing what the views were from many properties in the 1940's and 1950's.

Commissioner Broili asked Mr. Jacobs to explain why a stream restoration requirement would be unreasonable. Mr. Jacobs again referred to Item 3.d (Page 5, Attachment B) and explained that the words "enhanced" and "restored" are very broad. Therefore, meeting this requirement could be very costly, depending on the staff's interpretation.

Vice Chair Kuboi asked Mr. Jacobs to provide further information regarding how the Innis Arden Club's covenants could be linked to their reserve areas. Mr. Jacobs said he could provide the Commission with one or two legal opinions that explain how the original covenants also cover tree heights in the reserve areas.

Carol Solle, 17061 – 12th Avenue, submitted pictures that were identified as Exhibit 2.

John Hollinrake, 1048 Northwest, Innis Arden Drive, said that during the four years he has owned his property, seven of his trees have fallen down; one destroyed his storage shed. In addition, two of his neighbor's trees have fallen onto his property in areas where his children play. His property is adjacent to one of the reserves, where numerous trees have fallen. This presents a dangerous situation, and he has been required to hire an arborist to provide reports so that the trees could be taken care of. This new process would be even more lengthy and costly, and could result in additional risk. He suggested they go back to the prior system where a single arborist report would be sufficient to remove a dangerous and hazardous tree. Delaying the removal of hazardous trees puts people and property at risk.

Mr. Hollinrake referred to what he feels are erroneous statements made by Nancy Rust, Elaine Phelps and others that the Innis Arden Reserves are not subject to covenants. He referred to a written statement he submitted, which included a document that transferred the reserves to the Innis Arden Club. If the Club accepted the properties, the document required that they agree to apply the Innis Arden Covenants to all club properties, including the reserves. The Courts have held that the original covenants were designed to preserve and protect views and that the Innis Arden residents have private property rights.

Mr. Hollinrake pointed out that documentation can refute the statements made by Ms. Rust and Ms. Phelps. The property owners do have view rights for their private properties and the reserves.

Chair Piro asked Mr. Hollinrake if his property has been designated as a critical area. Mr. Hollinrake answered that parts of it are, and most of his hazardous tree situations have occurred within the critical area.

Bonnie Jardine, 18784 Ridgefield Road Northwest, said she moved to Innis Arden in 1960. She recalled that in the early 1960's, the shareholders and Club got together to devise a Reserve Management Plan, which identified certain critical areas where trees could not be cut. However, the present Innis Arden Club Board has thrown out the Original Reserve Management Plan and started cutting "hazardous trees" in the critical areas within the reserves. Now, they are proposing to cut trees in the Eagle Reserve in order to preserve views. She expressed her belief that trees within critical areas should only be cut if they are hazardous. She pointed out that the Eagle Reserve has steep slopes and a creek running through it, and these natural features should be taken into consideration. Ms. Jardine said that while some people believe the proposed Critical Areas Stewardship Plan would take away the Innis Arden Covenants, she doesn't see how this would be possible since the Club worked with the City to create the Reserve Management Plan.

Harley O'Neil, 18645 – 17th Avenue Northwest, said he is a member of the Innis Arden Board, but would be speaking as an individual property owner. He said he is fortunate enough to not live in the part of Innis Arden that has view obstruction by trees, except for those located within the reserve that are part of his view. He explained that many of the residents of Innis Arden have lived in the neighborhood for 50 years, and they have provided testimony and pictures showing the original 180 degree views they enjoyed. Now many of these people have no view at all, and they can't see the water or the mountains. Mr. O'Neil said that when he first got on the Club Board, he reviewed numerous legal documents from the Superior Court and Court of Appeals. The judges have made it very clear that the Innis Arden Board has a responsibility to the residents to protect the views and covenants. He asked that the Planning Commission and the City of Shoreline staff work with the Club Board to come up with a plan that is reasonable.

Mr. O'Neil referred to the proposed language for Section 20.80.087.2 (Page 4, Attachment B), which states that an approved stewardship plan may authorize limited cutting of non-hazardous trees. He expressed his concern that if trees are blocking views, there must be a way to replace them with other trees that would perform the same function. Mr. O'Neil also referred to the proposed language for Section 20.80.087.5 (Page 5, Attachment B) and pointed out that the requirements of a stewardship plan would be very onerous.

Commissioner McClelland said she recently read a statement in the covenants that said if a private property owner did not preserve his/her view, the opportunity to have a view would be lost. Mr. O'Neil said a property owner would not lose the opportunity for a view. He expressed his belief that Mr. Boeing should have planted different kinds of trees that did not grow to block views. In addition, he expressed his belief that prior Club Boards could have maintained a better plan.

Barbara Guthrie, 18531 Ashworth Avenue North, suggested that if removal of a tree is granted by the Director after assessment under the proposed Tree Evaluation Form, and assuming the tree does not

impose an immediate danger to property or life, consideration should be given as to the time of year the removal could occur. She further requested that tree removal be delayed until bird nesting season is over. Also, since Snags are extremely important to wildlife habitat and the Statement of Purpose in Section 20.50.310 notes the importance of maintaining fish and wildlife habitat, Ms. Guthrie requested the Commission consider a "keep the tree standing" policy. She pointed out that Seattle has such a policy, and they convert as many hazardous trees as possible into Snags.

Ms. Guthrie pointed out that, outside of critical areas, Shoreline's code allows any property owner permission to remove six trees every 36 months. She questioned how this is monitored, and suggested that for accurate monitoring, permits should be mandated for all tree removal within Shoreline, except those imposing immediate danger.

Ms. Guthrie stated that because money talks, it can be a great incentive in upholding ordinances. She pointed out that Bellevue has just instituted greater penalties for the removal of trees in environmentally critical areas, and residents who illegally cut trees now have to pay a fine based on the International Society of Arboriculture's prescribed value of a tree. For example, a large Douglas Fir in good condition could cost nearly \$12,000. Ms. Guthrie closed by suggesting that if Shoreline is serious about tree retention and if they want their City logo depicting conifers to mean something in the future, they must put some teeth into the regulations.

Judy Griesel, 648 Northwest 163rd Street, said that although she doesn't live in Innis Arden, she drives through it a lot. She said she is a big supporter of trees since they are very important to the environment and to the landscape. They make the area beautiful and help with erosion. Trees can be very beautiful to look at and through. As the Commission considers tree cutting policies, she asked that they consider not only safety issues but also how trees enhance neighborhoods and make them healthy.

Beverly Tabor, 325 Northwest 199th Street, said she is a former resident of Innis Arden. They purchased their property for the setting. She suggested that when Mr. Boeing developed Innis Arden, he gave no real thought to the environmental impacts. She said she became involved in the effort to preserve trees when she was asked to cut trees on her property to preserve another property owners' view. However, she also feels bad for the property owners who purchased property with a view that no longer exists. She said that when she contacted the King County Assessor's Office, she was told that the residents of Innis Arden had a right to keep the reserve areas undeveloped as greenbelts without being taxed for the view. However, private property owners with a view are assessed a higher tax. She said the property she currently owns has a significant number of trees on it, and she would not want anyone to force her to cut them down to preserve the view of an adjacent property owner.

Marilyn Brown, 17221 – 13th Northwest, said that right now, their view is considered good, and the view from adjacent properties to the north and south is considered excellent. She pointed out that the better the view, the more taxes a property owner is required to pay. She said her view is beautiful to her, and she is thankful her neighbors to the west have obeyed the rules and cut their trees. Ms. Brown distributed pictures depicting the view from her property.

Chair Piro asked if Ms. Brown's property is located in a critical area. Ms. Brown answered that it is not a critical area, and the people who affect their view are all private property owners. Because the neighbors are so considerate to cut the trees, their view has been preserved.

Wendy DiPeso, 328 Northeast 192nd Street, said Commissioner Pyle previously asked why the proposed language focuses on native vegetation and whether non-native vegetation would do the job as well or better (Question 23, Attachment A). Ms. DiPeso asked that the Commission keep in mind that the purpose of maintaining a critical area is to protect the watersheds, prevent erosion, and provide habitat for fish and wildlife. She pointed out that humans have already created disconnected and fractured islands natural areas, and the rapid change in the climate system is also impacting native plant and animal species. Choosing to replace native landscape with non-native plants would further degrade what is left of the existing ecosystem.

Ms. DiPeso said that while she doesn't live in Innis Arden, she has spoke to people on both sides of the debate. Her understanding is that when Innis Arden was originally established, covenants were put in place to require property owners to top trees in private areas to preserve views. She asked if these covenants are being enforced. She pointed out that, in some cases, people who purchased property that did not come with a view want to cut down trees in critical areas so they can get something they didn't pay for. She said she is not in favor of adjacent property owners being allowed to grow trees that end up blocking an existing view. However, she is in favor of protecting critical areas because of the value they provide to the entire community. Whatever they do, the City must be in compliance with the Growth Management Act, and her understanding is that the covenants are subservient to the State or County laws.

Commissioner Pyle asked Ms. DiPeso to define the terms "native" and "invasive." Ms. DiPeso explained that a native species is something that has been part of the ecosystem for a long time and is in balance with the rest of the ecosystem. Native species provide habitat and food and help clean the water before it reaches Puget Sound. She said an invasive species is something that did not originate from a particular area. It is brought in and, because of its nature, is able to spread and multiply and force out the native species.

Elaine Phelps, 17238 – 10th Avenue Northwest, said she represents the Association for Responsible Management of Innis Arden, Inc (ARM). She said that while the proposed regulations for hazardous trees and the cutting of trees and vegetation in critical areas are not yet where she would like them to be, they are a great improvement over what currently exists. She said the tree height amendment to the Innis Arden Covenants was approved in 1982 and was not part of the original covenants. It states in part, "In order to preserve the views of Puget Sound and the Olympic Mountains from lots in said subdivision, all trees, shrubs, brush and landscaping, whether native or planted, on residential lots in said subdivision shall be kept to a height no higher than the highest point of the roof surface nor higher than the height of the house on each lot, whichever is lower." Ms. Phelps said the Innis Arden reserves never were, are not now, and can never be residential lots. It follows from this that the reserves are not subject to the tree height amendment which, as stated, applies only to residential lots. She pointed out that this issue will be going to court soon, so it would be inappropriate for the Commission to make a decision one way or the other right now. Ms. Phelps recommended the Commission carefully consider the letter recently submitted by Paul Blauert that speaks knowledgeably and in great detail regarding this and related issues.

Ms. Phelps recalled that in 1997 she was part of a group that hammered out a compromise in Innis Arden regarding cutting of trees in the reserves for views. On one side were those who wanted to

improve or create views, and on the other side were those who wanted to protect the reserves. The Vegetation Management Plan that was finally adopted and approved by the City did not work mostly because those wanting to create views were not willing to abide by the agreement and also because the City did little or nothing to enforce the plan.

Ms. Phelps said she now comes before the Commission to oppose all cutting for views in critical areas because she has a better understanding of what is at stake and because she has witnessed the total disregard for the environmental consequences of cutting for views. In a letter dated May 8, 2006, the Innis Arden Board's Attorney stated that the Innis Arden Club shares the concern for protection of critical areas. But she pointed out this is not true, as evidenced by the irresponsible and environmentally ravaging cutting the Board has not only permitted but endorsed and promoted. She said pictures of this destruction were presented to the Commission previously. She added that the president of the Innis Arden Board went so far as to assert, in response to a plea to preserve particular trees, "the Board has no interest in whether a tree is in a critical area or buffer."

Ms. Phelps said that cutting trees in critical areas for private views is antithetical to the intent of the GMA and State Environmental Protection Act (SEPA). The Critical Areas Ordinance supplies the foundation on which state measures are implemented locally, and public and private critical areas form a great web of interconnectedness. She urged the Commission to take special measures to ensure that further degradation is as limited as possible. When it is allowed, it must have an urgent and necessary countervailing public benefit; and to the extent practical, it should be subject to strong mitigation processes.

Ms. Phelps pointed out that some letters the Commission received from Innis Arden residents attempt to establish as fact what is yet to be determined by courts. Letters that are most critical of the City staff's proposal are largely based on a particular and, in her opinion, incorrect interpretation of the Innis Arden Covenants. She emphasized that Innis Arden was never clear cut; only the residential lots were cleared. Ms. Phelps said that past court statements that writers attached to their letters were a careful selection of only those documents that support their position. Other documents exist that tend to refute their position on the interpretation of the Innis Arden covenants and support the position of their opponents.

Ms. Phelps advised that one letter suggests that several aspects of the staff proposal would embroil the City in legal controversies, but this assertion seems to be based on the doubly fallacious assumption that Innis Arden covenants establish view rights that embrace all trees and that these purported rights take precedence over state and city laws. She pointed that the City has its own legal advisers so they need not rely on lawyers who are partisans in the debate to determine what is lawful and what can be successfully defended in a court of law. Whatever decision the Commission makes, Ms. Phelps reminded them that the best plan is worth no more than the strength of effective enforcement policies that accompany it. She urged them to consider the enforcement details before they conclude their deliberations.

Commissioner Broili asked Ms. Phelps to provide her definition for "view." Ms. Phelps said ARM has not attempted to provide a definition for "view." Her definition of "view" is what you can see from your home. Innis Arden has wonderful views, and some are territorial views of trees. Even if all of the trees and homes were removed, she would not have a view of the mountains or Puget Sound, but she does have a deep concern about the environmental protection of critical areas.

Vice Chair Kuboi asked if the legal action initiated by ARM has a timetable for completion. Ms. Phelps answered that no timetable has been established yet.

June Howard, 824 Northwest Innis Arden Drive, expressed her opinion that the proposed Critical Areas Stewardship Plan would be impossible to implement to restore views. A 10-acre requirement is far too great, since no one in Shoreline owns 10 acres. She pointed out that the Innis Arden property owners are trying to obtain the views they should have had to start with. She reminded the Commission that the City negated the Vegetation Management Plan that was referenced earlier. She also pointed out that arborists have provided a list of native trees and shrubs that could be used in critical areas to restore views. In addition, she pointed out that hundreds of plants and shrubs have been planted in the reserves where cutting and planting have occurred. They are not desecrating the reserves. Instead they are opening them up. They are very pleasant to walk in. She summarized that just because they want to protect their views does not mean they don't love the environment. They love the trees, but they also want their views. They should be able to do rehabilitation in critical areas when trees need to be replaced. She asked the Commission to listen and understand their situation.

Cass Turnbull, 906 Northwest 87th Street, Seattle, said that 20 years ago she started an organization to promote better pruning. Her main concern is that trees not be topped. While people think this is a good way to save both the view and the trees, it actually destroys trees by making them ugly and dangerous. She said she is not sure the Court of Appeals Judge realized that some residents were being forced to make their trees hazardous by other residents seeking view. She expressed her opinion that people should not be allowed to create a hazardous situation by topping trees. Ms. Turnbull pointed out that a major component about whether or not a tree is dangerous is the target. If there is no target, there is no hazardous tree. A tree can only be considered a hazard if it is going to hit something if it falls over, and that something needs to be there most of the time. For example, a pathway would not have a high hazard rating if, at any given time, a person is not standing directly beneath the tree. On the other hand, a house would have a high target rating. When judging whether or not a tree is potentially dangerous, she urged the legal department to pay close attention to the target and how often it is present during a 24-hour period.

Commissioner McClelland inquired regarding the name of Ms. Turnbull's organization. Ms. Turnbull answered that her organization is called Plant Amnesty, which is an organization to promote better pruning. She said she is also an International Society of Arboriculture (ISA) Certified Arborist. She reminded the Commission that landscape architects are not qualified to identify hazardous trees; but some of the ISA Certified Arborists have training in that regard. She said she would look for a certified arborist who has several years experience and whether or not they have taken the specific courses on hazardous tree evaluation. She said peer review is a good idea to provide a check system to make sure an applicant's expert is not "bought off."

Commissioner Phisuthikul asked if there are guidelines or a formula set forth for determining if a tree is hazardous. Ms. Turnbull said the ISA has identified three factors to consider when evaluating a hazardous tree: the part of the tree which is going to fail and the most likely point of failure, the weight of the tree or portion of tree that will fall, and what it would hit. The hazardous tree must be near something that is present a good part of the day for it to receive a high hazard rating. Commissioner Phisuthikul asked Ms. Turnbull if the City's Tree Evaluation Form would allow for an assessment that is

consistent with the ISA standards. Ms. Turnbull said she has not reviewed the City's form, but she assumed it was the same as the one used by the ISA.

Ewa Sledziewski, 17736 – 15th Avenue Northwest, said she is a past board member of the Innis Arden Club. She pointed out that none of the Commissioners are Native Americans. All of their ancestors came to America for freedom, but now they are considering a proposal that would limit personal freedoms. She expressed her belief that she should not have to come to the City for permission to prune or cut a hazardous tree on her property. She asked how much time it would take for her to apply for and receive this permission. In the meantime, who would be responsible for the damages that occur when a tree falls?

Ms. Sledziewski expressed her concern that none of the residents of Innis Arden really know who the members of ARM are. Only those who share their philosophy are invited to attend their meetings. ARM is a small group that pulls strings in the City to get what they want—being surrounded by trees. They do everything possible to make life hard for those who want to preserve their views. She expressed her opinion that a compromise could take place if both sides were willing to work together. They don't need to have Douglas Firs in Innis Arden when other lower-growing species could be used to serve the same purpose.

Fran Lilleness, 17736 – 14th Avenue Northwest, said she has lived in Innis Arden since 1987. She pointed out that Innis Arden was platted parallel with the Sound deliberately to maximize the number of views that could be offered to the residents. She shared the original plot map of Innis Arden and referred to Number 13 from the reserve language which states that “the reserve tracts would not be dedicated to the public but shall be used for parks, trails, playgrounds or other community purposes, not to be standing and obstructing views.” This language gives the residents of Innis Arden every right to create a natural park within their reserves. The proposed language would take property, and this would be in violation of the law. The residents paid dearly for the covenants.

Ms. Lilleness referred to Ms. Phelps' comment that only the residential lots are covered by the covenants. She read from the original covenant document which states that all tracts, parcels, lots and areas are subject to the covenants. She said they have been working for the past 15 years to protect their covenants. Commissioner Hall asked about the date of the map and original covenants that were referenced by Ms. Lilleness. Ms. Lilleness answered that there is no date, but the map is about 60 years old.

Nancy Rust, 18747 Ridgefield Road Northwest, disagreed with many of the previous speakers. She felt that a lot of misinformation has been spread around Innis Arden. People have been told they will lose their property rights and views, but nothing could be further from the truth. The City is not taking away any rights. The view preservation amendment was not part of the original covenants, and it had nothing to do with what Mr. Boeing planned or what was in the original platting. Innis Arden was never entirely clear cut, and she purchased a wooded lot in 1957. Some of the trees were very old at the time. She offered her support for the hazardous tree amendment because the present statute has been abused. In the past, healthy trees have been cut down for views.

Ms. Rust refuted the idea that residents of Innis Arden have a private view right. The attorney for the Innis Arden Board quoted from the judge who ruled that the view preservation amendment was legal,

and she does not dispute this. However, the attorney does not refer to the fact that the judge ruled the amendment does not cover the reserves. He only talked about the part of the suit that dealt with residential lots. She emphasized that the proposed amendments only apply to critical areas.

Richard Ellison, 8003 – 28th Avenue Northeast, Seattle, said he teaches environmental science and biology at Shoreline Community College, and he takes his classes into the Boeing Creek area to study the habitat and changes in ecology. He said he wishes they could return Boeing Creek to the way it was 50 or 60 years ago when the ecosystem was cleaner and the water flowed much better. While he recognizes they cannot do this, the City has a responsibility to do what they can to preserve and enhance the native species and habitat. Non-native species are those things that did not evolve in the ecosystem, and they are not too much of a problem if they are not invasive. But property owners along Boeing Creek are not controlling the invasive species, and this is devastating the habitat. If they whittle away what remains of the critical areas in order to protect or create view, they end up taking away their own heritage. It would be unfortunate to remove the large trees in order to protect a private property owner's view. He urged the Commission to support the proposed ordinance as written. The City's current provision for removing hazardous trees has been abused in the past, and the proposed new language would correct this problem.

Pam Smit, 18229 – 13th Avenue Northwest, said she met with Mr. Tovar a few weeks ago because she was concerned about the activities of ARM, which represents a very small minority of the neighborhood. She pointed out that no proof has been provided to support their statement that the City's hazardous tree ordinance has been abused. On the contrary, the Innis Arden Club President has provided documentation from two different groups of arborists.

Ms. Smit pointed out that the majority of residents in Innis Arden are concerned about the environment. People who like trees for a view can move somewhere else, but they shouldn't ask the residents of Innis Arden to sacrifice their views. She noted that Innis Arden is small and unique. There are 538 homes in Innis Arden, and everyone knows what the covenants are. People should either live by the rules or move. She urged the Commission to reconsider the 10-acre requirement since this would eliminate the possibility of applying the concept to private lots.

Cathryn Carlstrom, 1033 Northwest 175th Street, said she is a real estate developer who lives in Innis Arden. She pointed out that Shoreline was founded on views, with shores to the north, south, east and west. At one time, it was all collectively clear cut. Her grandparents were homesteaders in the Shoreline area, and she has a deep vested interest in the community. When the area was clear cut, many of the trees that grew back were not Douglas Firs. There are many deciduous trees in the reserves. There is a significant amount of wind speed in the area, and over the years the trees in the reserves have reached a critical point in their life and are becoming an increasing maintenance concern. The community needs to come together to create a mutually responsible stewardship program for all of Shoreline. She asked the City to take this responsibility seriously. Where there are policies and laws that conflict with homeowners' rights that have been in existence for many years, they must try to harmonize. There is no reason the City's goals can't be accomplished through compromise.

Robert Blair, 18365 Ridgefield Road Northwest, said he also lives in Innis Arden. He urged the Commission to consider the legal issues and previous court rulings. If the City approves an ordinance that is not legal, it will be challenged and overruled.

John Crooks, 17710 – 24th Avenue Northwest, said he lives in Innis Arden. He applauded the Commission for overseeing the crafting of the proposed document. However, he cautioned them to craft a document that does what it has to do, but does not attempt to resolve an internal dispute in Innis Arden.

Carol Solle, 17061 – 12th Avenue Northwest, referred to Ms. Turnbull's earlier comment that paths are not a target for a hazardous tree. She pointed out that the Innis Arden neighborhood does not have sidewalks. The road shoulders are frequently overgrown with vegetation and there are blind corners. The children use the reserves to get to the swimming pool, school, etc. She urged the Commission to consider paths as being legitimate targets for hazardous trees.

Presentation of Final Staff Recommendation

Mr. Tovar advised that the staff would be interested in further discussions regarding the concept of adopting a list of arborists to perform the hazardous tree evaluations. Staff is concerned that the proposed language not result in a redundant process. The City Council has expressed their concern that the City rely on advice that is not only expert, but as credible and objective as they can make it.

Commissioner Pyle commented that, as part of their recently adopted Critical Areas Ordinance, King County has devised a preferred consultant's list that they use for stewardship plans for critical areas tracts. He suggested that staff find out more information about their program. Mr. Tovar agreed to research the County's language, as well as gather ideas from other jurisdictions. He agreed that creating a list of qualified individuals would certainly simplify the process.

Final Questions by the Commission

Commissioner Broilli asked Mr. Jacobs if it was true that the view covenants were conceived and adopted in 1982. Mr. Jacobs answered that the view covenants were part of the original covenants that were created long before 1982. Covenant 11 speaks to nuisance trees and other vegetation and gives the Board conclusive authority to make a decision that a tree or a hedge is a nuisance. The Court of Appeals found that the 1982 amendment was designed to clarify the intent of the original covenants. The Courts found that the 1982 amendment was part of the original intent of the Boeings.

Commissioner Broilli referred to the suggestion by some citizens that the view covenants were for private property only and did not extend to the reserves. Mr. Jacobs explained that granting language to the club specifically stated that all tracts, including the reserve tracts, were subject to the covenants. Despite Ms. Rust's and Ms. Phelp's assertions to the contrary, the Club has received legal opinions to this effect from other than their Club Council, which were issued as early as the 1980's.

Commissioner Hall asked Mr. Jacobs to clarify whether Covenant 11 speaks about nuisance or only about noxious uses of property. Mr. Jacobs replied that Commissioner Hall's copy of the covenants was incomplete. He read Covenant 11 in its entirety, pointing out that "the construction or maintenance of a spite or nuisance wall, hedge, fence or tree shall be prohibited on said property." Commissioner Phisuthikul pointed out that Covenant 11 does not say anything specifically about view blockage being classified as noxious or a nuisance. Mr. Jacobs said the courts have held that a tree in violation of a mutually restrictive view covenant is considered to be a nuisance. He further stated that the verbiage he read from Covenant 11 has been interpreted as walls, hedges, fences or trees that block views.

Commissioner McClelland pointed out that the covenants have been in place for many years and there has always been a Board that had authority to carry out the covenants. However, trees have been allowed to grow and views have not been protected. She asked why the Innis Arden Club Board has not created a history of protecting views. Secondly, when the GMA was adopted in 1990 and local governments were required to carry out state law by enacting a critical areas ordinance, did the Board ever talk about the consequences this would have on the Innis Arden covenants and views? Mr. Jacobs said some of the views have been protected and preserved, but some have been lost. Before the tree height covenant was adopted, people felt their only recourse was to file suit in court, and many did not want to have disputes with their neighbors. The Club's Board was encouraged by the court to adopt a procedure to enforce the covenants, and this was done in 1992. The current procedure was adopted in 2005. The Board hears disputes between neighbors and makes a determination about whether a tree is above the roof height and/or obstructs the Sound view. If the property is in a critical area, the Board recognizes that the respondent must obtain a permit from the City in order to remove the tree. However, if the stewardship plan is limited to a minimum of 10 acres, private property owners would not be able to cut trees to restore views.

Mr. Jacobs shared a 2001 project that took place in the Grouse Reserve. The Club worked with the City to remove about 70 diseased and declining trees and plant 350 trees and thousands of plants and ground cover. Grouse Reserve is now flourishing again, but the canopy has been lowered. Mr. Jacobs said that as a result of changes in the King County Sensitive Areas Ordinance in the mid 1990's, the Board developed a Vegetation Management Plan that was approved in 1997. The plan did not work well, and the City revoked it a few years ago.

Chair Piro asked Mr. Jacobs to share some of the issues and problems related to the Vegetation Management Plan's lack of success. Mr. Jacobs said one problem was that it required a density of 125 basal feet before any trees could be removed. This is generally a requirement for old growth forests rather than an urban greenbelt. This threshold was considered too high.

Vice Chair Kuboi pointed out that current code allows a private property owner to cut down significant trees every 36 months in non-critical areas. He further pointed out that the hazardous tree language would apply to the entire City and not just critical areas. He questioned how these two regulations relate to each other. Mr. Tovar explained that the regulation that allows a property owner to remove six trees within a 36-month period applies to trees that are not within critical areas. The hazardous tree ordinance would only come into play in non-critical areas if a property owner had already removed six trees. He clarified that the hazardous tree ordinance would apply to the removal of any tree that is located within a critical area.

Vice Chair Kuboi asked if the proposed language for the removal of hazardous trees makes a distinction between significant and otherwise. Mr. Tovar answered that the impact of the hazardous tree amendments to non-critical areas would be small because a property owner would be allowed to remove up to six significant and any number of smaller sized trees from a property that is not classified as critical. Vice Chair Kuboi said it is not clear to him that the proposed language would not apply to a non-significant hazardous tree. Commissioner Pyle explained that a property owner would be allowed to remove a non-significant tree from a non-critical area without City approval whether it were hazardous or not.

Commission Deliberation

The Commission discussed whether or not they wanted to continue their deliberations or postpone them to a future meeting. Commissioner Phisuthikul suggested that the Commission could also decide to separate the two issues and act on them individually. The Commission agreed to consider each of the items separately, starting with the Hazardous Tree Regulations.

COMMISSIONER HALL MOVED THAT THE COMMISSION RECOMMEND TO THE CITY COUNCIL STAFF'S RECOMMENDED PROPOSED CODE AMENDMENT LANGUAGE REGARDING HAZARDOUS TREES (20.50.310). COMMISSIONER BROILI SECONDED THE MOTION FOR DISCUSSION PURPOSES.

Vice Chair Kuboi asked if staff is planning to propose a definition for "recreational trail." Mr. Tovar said that staff would research definitions from other jurisdictions and provide a proposed definition for the Commission to consider on June 1st. Commissioner McClelland suggested that they take out the word "recreational." Mr. Tovar encouraged the Commission to be as specific as possible about the types of trail they have in mind, particularly if they are identifying legitimate targets for purposes of being concerned about trees falling on them.

COMMISSIONER HALL MOVED TO AMEND THE MAIN MOTION TO DELETE "RECREATIONAL TRAILS" FROM THE LANGUAGE IN SECTION 20.50.310.A.1.i. COMMISSIONER BROILI SECONDED THE MOTION TO AMEND.

Commissioner Harris said his interpretation of a recreational trail is one that is used occasionally for pleasure or enjoyment. If a trail is used everyday by students going to school, it would not be considered a recreational use.

Commissioner Broili pointed out that trails are not high target areas because people pass by quickly. The time a person is near a hazardous tree is generally seconds. He suggested the Commission must first flush out the issue of target, and there is arborist language that could be used to guide them through the process.

Commissioner Hall referred to the list of other targets identified on the Tree Evaluation Form (Attachment D) and noted that most are regulated by the City through other required permits. However, he expressed his concern that anyone could construct a trail without a permit in order to apply the hazardous tree regulations. There is a difference in the risk associated with a City-maintained and permitted sidewalk constructed to engineering standards compared to a trail through the woods.

Vice Chair Kuboi pointed out that at least one City Council Member specifically called out recreational trails as a provision in the moratorium language. Mr. Tovar recalled that the moratorium initially adopted in January did not include "recreational trails" on the list of targets. At the public hearing in February, the Innis Arden Club asked them to include "recreational trails." The City Council agreed to amend the interim control. However, the Commission could still recommend that "recreational trails" be deleted and then explain why. Commissioner Phisuthikul suggested that perhaps it would be helpful to better define the term "recreational trail."

COMMISSIONER BROILI MOVED TO EXTEND THE MEETING ANOTHER 15 MINUTES. COMMISSIONER PYLE SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

Commissioner Pyle pointed out if recreational trails are covered somewhere in the Parks and Recreation Master Plan or Transportation Master Plan as something that is essential to transportation throughout the City, they should keep the term in the proposed provisions, as well. Commissioner McClelland agreed. She suggested that instead of just listing the targets, perhaps the Tree Evaluation Form should rank the targets in terms of risk. Mr. Torpey referred to the back side of the Tree Evaluation Form and noted that targets are already rated on a 1 to 4 scale, based on the amount of use.

Commissioner Broili expressed his concern that if "recreational trail" is left in the proposed language, they must provide a definition and/or some way of blocking the proliferation of trails and judging whether it is a high or low target. Commissioner Harris said he would be in favor of leaving "recreational trails" in the proposed language. He said he would be opposed to exposing the City to additional liability by not allowing them to act in a rapid manner. Again, Commissioner Pyle suggested that if they keep the term "recreational trails," they should use a definition that is consistent with the one used in the Parks and Recreation Master Plan or Transportation Master Plan. Mr. Torpey agreed that it would be confusing to have different definitions for the same term. He said he would check to see how the term is defined in other areas of the code.

Commissioner Hall pointed out that most of the critical areas in Innis Arden are geologic hazard areas. The GMA requires the City to designate and protect critical areas for a reason, and there are different reasons for each of the five types of critical areas. The purpose of regulating development activities in geologic hazard areas is not so much to protect the habitat functions, but to prevent possible landslides. It might not make sense to provide a trail at the bottom of a gully in an Innis Arden Reserve for school children to use because he suspects that landslides are common occurrence in these locations. Commissioner Broili said that during his tour of the reserve areas he noted that some of the trails that had been constructed in the reserves were far more hazardous than any of the trees. Commissioner Phisuthikul reminded the Commissioners that the Hazardous Tree Ordinance would apply to all areas of the City, and not only the critical areas.

THE MOTION TO AMEND THE MAIN MOTION TO DELETE "RECREATIONAL TRAILS" FROM THE LANGUAGE IN SECTION 20.50.310.A.1.i FAILED UNANIMOUSLY.

Continuation of the Public Hearing

Commissioner Hall suggested the Commission continue the public hearing and allow staff the opportunity to do additional research and bring back a proposed definition for "recreational trails."

Chair Piro advised that if the hearing is continued to the next meeting, no additional public notice would be sent out. Any new language that is developed by staff would be made available on the City's website and in the Planning Commission packets that are distributed prior to the meeting. Because the hearing would be continued, citizens would be allowed to submit additional written testimony until the public hearing is closed at the next meeting. However, he emphasized that it would be helpful for the citizens to submit their comments by May 24th so that they could be forwarded to the Commission as part of the staff report. Mr. Torpey shared his contact information with members of the public.

Chair Piro clarified that when the public hearing is continued at the next meeting, individuals who have already testified would typically not be eligible to testify again. However, if new language is proposed, these individuals would be allowed to address strictly the new information. Anyone who hasn't yet testified would be eligible to speak to the Commission.

Commissioner Phisuthikul referred to a typo in the draft ordinance (Page 4, Attachment B). Staff noted that "SMC 20.80.085" should be changed to "SMC 20.80.030." Mr. Torpey pointed out that SMC 20.80.030 provides exemptions for landscaping, removal of blackberries, etc.

Chair Piro offered appreciation to the staff for the way they provided information back to the Commission based on the questions they raised at the last meeting.

Commissioner Phisuthikul questioned if the Commission wanted staff to work on the concept of providing an approved list of professionals. The Commission agreed to allow staff to bring this idea back as an option for consideration at the next meeting.

Commissioner Hall pointed out that if the public hearing were continued to the June 1st meeting, other issues would have to be postponed to a later date. He reminded the Commission that they have scheduled a joint meeting with the Parks Board to discuss Urban Forest Management. In addition, discussions regarding the Cascade Agenda and Form-Based Zoning have also been scheduled for June 1st. He noted that because other individuals have been invited to participate, he would prefer not to change the June 1st agenda. Chair Piro added that public hearings have also been tentatively scheduled on the June 15th agenda.

Mr. Tovar said staff would likely present a request to the City Council that they extend the moratorium to provide ample time for the Commission and City Council to consider the issue. He noted that the town hall meetings that are scheduled in June will cover some of the topics that are scheduled for discussion on June 1st. Therefore, the Commission could postpone the joint meeting with the Parks Board until after the town hall meetings have taken place and the City Council has whittled down their goals and given clear direction on what their priorities are. Commissioner Hall expressed concern that the joint meeting with the Parks Board was an action item identified by the Commission at their March 2005 Retreat.

VICE CHAIR KUBOI MOVED THAT THE PUBLIC HEARING BE CONTINUED TO JUNE 1, 2006. COMMISSIONER WAGNER SECONDED THE MOTION. THE MOTION CARRIED 7-0, WITH COMMISSIONERS HALL AND BROILI ABSTAINING.

REPORTS OF COMMITTEES AND COMMISSIONERS

There were no reports from committees or Commissioners.

UNFINISHED BUSINESS

There was no unfinished business on the agenda.

NEW BUSINESS

There was no new business scheduled on the agenda.

ANNOUNCEMENTS

No additional announcements were made during this portion of the meeting.

AGENDA FOR NEXT MEETING

Mr. Tovar clarified that the items originally scheduled for June 1st would have to be rescheduled to a future agenda. He noted that the next open agenda would be September 7th. The Commission asked staff to work with the Parks Board to reschedule the joint meeting as soon as possible, perhaps at one of the August meetings.

ADJOURNMENT

The meeting was adjourned at 10:08 p.m.

Rocky Piro
Chair, Planning Commission

Jessica Simulcik Smith
Clerk, Planning Commission

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CITY OF SHORELINE

SHORELINE PLANNING COMMISSION SUMMARY MINUTES OF REGULAR MEETING

June 1, 2006
7:00 P.M.

Shoreline Conference Center
Mt. Rainier Room

COMMISSIONERS PRESENT

Chair Piro
Vice Chair Kuboi
Commissioner Broili
Commissioner Harris
Commissioner Phisuthikul
Commissioner McClelland
Commissioner Hall
Commissioner Wagner
Commissioner Pyle

STAFF PRESENT

Joe Tovar, Director, Planning & Development Services
Steve Cohn, Senior Planner, Planning & Development Services
Matt Torpey, Planner II, Planning & Development Services
Jessica Simulcik Smith, Planning Commission Clerk

CALL TO ORDER

Chair Piro called the regular meeting of the Shoreline Planning Commission to order at 7:05 p.m.

ROLL CALL

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

APPROVAL OF AGENDA

The agenda was approved as submitted.

DIRECTOR'S REPORT

Mr. Tovar said he would like to discuss the Commission's agenda planner at some point, but he suggested that this discussion be postponed until after the public hearing and Commission deliberation on the Hazardous Tree Ordinance and Critical Areas Stewardship Plan have been completed.

Mr. Tovar announced that the joint City Council/Park Board/Library Board/Planning Commission meeting has been scheduled for Tuesday, June 27th instead of Thursday, June 29th. Therefore, the Commission could decide to schedule a special meeting on the fifth Thursday (June 29th) if need be.

APPROVAL OF MINUTES

The minutes of May 18, 2006 were approved as submitted.

GENERAL PUBLIC COMMENT

Bob Barta, 15703 – 1st Avenue Northwest, pointed out that when any of the plans (Development Code, Shoreline Municipal Code, and Comprehensive Plan) are incongruous with the intent of Shoreline's policy to promote public health, safety and general welfare, corrections must be made as soon as possible. Secondly, Mr. Barta suggested the Commission hold a discussion at a future meeting to determine at what point a City representative or employee would be required to represent or assist the public at neighborhood meetings when land use development projects are being considered. He suggested that one attendee from the neighborhood should be designated as a contact person so the City could verify how an issue was settled. He also suggested that a video or tape recording be made. He said that, in his experience with neighborhood meetings, the public tends to be aced out of the process. Lastly, Mr. Barta encouraged the Commission to schedule a future discussion about ways to accommodate affordable housing in Shoreline, especially for younger couples. The City needs to have children in the community to keep the schools full. He submitted documents regarding the concept of community land use trusts (Exhibit 3) for the Commission's consideration.

Dennis Lee, 14547 – 26th Avenue Northeast, reminded the Commission of the concept of "neighborhood sub area planning" which is called out in the Comprehensive Plan. This concept was designed to protect the character of the existing neighborhoods. He briefly reviewed recent issues that have come up in the City regarding minimum lot size, cottage housing, multi-family residential housing, etc. He also reminded the Commission of a previous suggestion that the City create design standards to prevent developers from taking advantage of the intention of cottage housing (smaller units with lots of open space). Mr. Lee asked the Commission to consider the opportunity to complete a sub area plan for the Briarcrest Neighborhood. This would be a neighborhood driven development process, and the end result would have to be consistent with the Comprehensive Plan. He pointed out that there are some 2 and 3 bedroom starter homes on 7,200 square foot lots in the Briarcrest Neighborhood, but these would likely be replaced in the future with larger homes. The properties along 145th would likely be developed as multi-family units. A neighborhood sub area planning process would allow them to balance the uses, preserve the neighborhood character, and offer home ownership opportunities.

Chair Piro asked staff to contact Mr. Lee and advise him about what is currently happening with sub area neighborhood planning in the City. Mr. Tovar said staff recently discussed the concept of neighborhood planning with the City Council, and they plan to give a short report to the Commission on June 15th. Chair Piro also requested that staff provide an update on the City's progress in reviewing housing issues. Mr. Tovar reminded the Commission that the City Council has scheduled two town hall meetings to solicit public input regarding their 16 draft goals, including the issue of housing choices,

neighborhood planning, etc. The meetings are scheduled for June 6th at 6:30 p.m. at the Historic Museum and June 14th at 6:30 p.m. at the Shoreline Center.

CONTINUED PUBLIC HEARING ON PERMANENT HAZARDOUS TREES REGULATIONS AND CRITICAL AREAS STEWARDSHIP PLAN

Chair Piro reviewed the rules and procedures for the continued public hearing. He explained that, typically, oral comment would only be accepted from those who did not testify on May 18th. However, because revised provisions have been offered that were not included in the May 18th draft, oral comment would be accepted from people who previously testified, as well. He asked that they limit their testimony to the new provisions, only. He noted that previous comments have already been included as part of the record.

Staff Briefing

Mr. Tovar referred to a memorandum from staff dated May 25, 2006, and reviewed the four attachments as follows:

- Attachment A – Proposed text showing staff recommended revisions in strikeout/underline format.

Mr. Tovar referred to Item “h” and explained that the proposed new language would require the director to establish a list of arborists, and persons seeking an exemption would have to choose one of the arborists from the list. The arborist would make a professional recommendation in accordance with the standards of the International Society of Arboriculture, and the Director would make the final determination. He noted that changes were also made in Items “i” and “j” to reference the list.

Mr. Tovar referred to Item “i” and recalled that issues were raised about whether walkways, trails, and sidewalks should be identified in the text of the code. He said it is clear that approved paths made of asphalt or concrete are places where people would walk. However, the issue is not so clear with unimproved trails. Rather than redefining “trails,” staff has proposed language in the code provisions for trees that would give the Director the discretion to determine whether or not a trail is a designated trail for purposes of constituting a target. Mr. Tovar also reviewed the minor changes that have been proposed for Item “j”.

- Attachment B – City of Shoreline Trails Information

Mr. Tovar pointed out that the Shoreline Municipal Code’s definition for trails might be useful for describing where some trails in the City might be, but it does not describe all trails. Again, he reviewed that the recommended changes to Item “i” of Attachment A would allow the Director the discretion to determine whether a trail is a designated trail for purposes of constituting a target.

- Attachment C – Memorandum from City Attorney and Planning Director

Mr. Tovar said this memorandum was written in response to public comments regarding the relevance and effect of prior litigation, including Viking versus Holm, on the City's authority and discretion to craft the proposed regulations.

▪ Attachment D – Additional Public Comment Letters

Mr. Tovar advised that the Planning and Development Services Department has received a number of additional written comments, which were included as Attachment D.

Mr. Tovar advised that since the staff report was written, the City Attorney received additional correspondence on a number of subjects, including the relevance of the Viking versus Holm decision and the City's right to pass critical areas regulations that might conflict with the Innis Arden Covenants. He read the additional memorandum that was provided by the City Attorney to supplement his earlier response to this concern.

Mr. Torpey provided two maps. One identifies the critical areas within the City, including streams, lakes and wetlands and slopes. The other map shows the location of the Innis Arden Reserves. He noted that Reserve M is a City-owned property, although it is contained within the Innis Arden neighborhood. In response to a question from the Commission, he said staff could provide, on a request basis, a map of critical areas for any area of town.

Continued Public Testimony or Comment

Beverly Meln, 1440 Northwest 186th Street, said she would like to address the preservation of the Innis Arden Reserves, which comprise much of the sensitive critical areas in Innis Arden. Some have suggested that strict preservation of these areas would violate the property owners' "right to a view." She expressed her belief that the City cannot violate rights that do not exist. She explained that in 1992, the King County Superior Court mandated that the Reserves are not governed by the view amendment and trees in the Reserves cannot be cut for views under that amendment. She concluded that only residential lots could be cut for views. She emphasized that all the Reserves were, and still are subject to the enforcement of the Critical Areas Ordinance. She urged the Commission to do all they can to protect and preserve all of the sensitive critical areas in Shoreline. They are important to ensuring a healthy quality of life in the City. She submitted legal documents to support her statement, which were identified as Exhibit 4.

Wayne Cottingham 17228 – 10th Northwest, said he has lived in Innis Arden for the past 41 years. He pointed out that there are no Innis Arden Covenants, and they are not a covenanted community. They have restrictive mutual easements that were impressed on the land by Mr. Boeing through the first master deed for each of the three subdivisions. As Mr. Boeing addressed the restrictive mutual easements, his operative words were "subject to." When subsequent lots were sold, they referred back to the master deed and made each lot "subject to." Mr. Cottingham explained that in 1949, when Mr. Boeing wrote the restrictive mutual easements for Innis Arden 3, addressing Section 13 of Paragraph 13, he wrote "Reserve M may be divided into residential lots at which time they shall become subject in all respects to the restrictive mutual easements of Innis Arden 3 in the same manner as all of the other

residential lots.” That was the only tract that could be divided and the only one that was not given to the Innis Arden Club. It was the only tract that could be amended. Thirteen months after Mr. Boeing wrote the deeds, he offered to purchase stock in the Innis Arden Club, Inc. and asked that they be bound by the restrictive mutual easements. Upon receiving that assurance, he quick claim deeded the Reserves to the Innis Arden Club, but not subject to those certain restrictive mutual easements.

Art Wright, 1304 Northwest 8th Street, said he is a 20-year resident of Innis Arden. When his lot was first developed, it was not clear cut. It was a wooded lot. In his deed, the word “covenant” does not appear. Instead, the words “restrictive mutual easements” was used. The Commission should understand there is a distinction between a covenant and an easement as far as property rights are concerned. Likewise, the word “view” does not appear in the papers drawn up by Mr. Boeing in the 1940’s. There is a paragraph concerning fences, hedges and walls and the noxious use of property. In this day and age, the public does not consider trees to be a nuisance. The only nuisance in Innis Arden might be said to be the club house because of the noise it creates. Trees absorb carbon dioxide to help the atmosphere, and most cities are working hard to get greenbelts. However, the Innis Arden Board wants to eliminate their greenbelt. Mr. Wright said he supports the proposed ordinance, which would help preserve the greenbelts within the City.

Mike Jacobs, 18301 – 8th Northwest, Innis Arden Club President, advised that Mr. Cottingham, Ms. Meln, Ms. Phelps and a few other residents have sued the club. They have some unique ideas as to what the covenants consist of and require. This matter is in King County Superior Court. To date, they have filed a number of motions, but they have yet to be successful with any of them.

Mr. Jacobs referred to Attachment C (the memorandum submitted by the Planning Director and City Attorney) and said the club is very concerned about its content. The memorandum suggests that the Innis Arden Club representatives have overstated the effects of prior litigation. Mr. Jacobs specifically referred to the Viking Decision (August 2005), and said the court concluded that the City has no authority to invalidate restrictive covenants. Yet, that is essentially what the City is proposing to do now.

Mr. Jacobs pointed out that, as proposed, the Stewardship Plan would prevent Innis Arden residents from removing any trees within critical areas that are less than 10 acres in size, and this includes all private properties. It also limits the removal of trees to the view that existed at the time the plan was submitted. He suggested that this would result in an arbitrary and capricious taking situation. The City Attorney states in his June 1st memorandum, that “The right to have trees cut for view and the owner’s right to cut for view on his or her own property are both subject to local land use regulations, which are not arbitrary or capricious.”

Mr. Jacobs pointed out that in 2002, the club presented a vegetation management plan to the City for Grouse Reserve, which is a critical area. As per the approved plan, the City permitted the club to remove approximately 70 trees in the critical area. He submitted a copy of the vegetation management plan, which was identified as Exhibit 6. He questioned why it was permissible in 2002 to remove trees within a critical area and now it is not. He questioned the science that would support the proposed prohibition of even one tree being removed from a critical area. He asked that the Commission reject

the proposal and allow the club to work further with staff to come up with a plan that is mutually acceptable and beneficial to all.

Fran Lilleniss, 17730 – 14th Avenue Northwest, referred to the list of invasive species that were reviewed at the last meeting and noted that the list did not include human beings, even though they are the most invasive species on the planet. Humans have chosen to live the way they want to without regard to the environment and habitat. She referred to Mr. Ellison's comments at the last meeting that property owners along Boeing Creek are not controlling the invasive species, and this is devastating the habitat. She provided a pictures of an invasive species property that is not being cared for, and asked what the City intends to do about the situation. The pictures were entered into the record as Exhibit 7. She said she does not feel that property with trees cut down would be ugly.

Ms. Lilleniss pointed out that Mr. Boeing paid extra money to give Innis Arden property owners protective mutual easements, which they call covenants. Legally, she suggested that protective mutual easements are actually stronger than covenants. She noted that the Reserves were not included in Judge Ellington's lawsuit because, at the time, the property owners adjacent to the Reserves dealt with trees that were growing in their views.

Harley O'Neil, 18645 – 17th Avenue Northwest, said he is a resident of Innis Arden. He pointed out that when Mr. Boeing sold the lots, he specified which ones were view lots and they were sold for a higher price. Secondly, Mr. O'Neil expressed his belief that the majority of Innis Arden residents are concerned about the critical areas. However, he is not convinced that some of the trees in question are doing a better job than another type of tree that could be used for soil stability, water absorption, etc. He urged the Commission to review best available science to determine what could be done to secure and protect the critical areas and, at the same time, provide the views people were given when they purchased properties. It is sad to see what has happened to the views over the years.

Pam Smit, 18229 – 13th Avenue Northwest, said she also lives in Innis Arden. She said she is confused about the process for reviewing the proposal. She asked why the City didn't use more of a collaborative effort. Since the Innis Arden community would be most impacted, she suggested the City should have held a meeting with the people living in that neighborhood. She urged the Commission to stop the debate about whether or not the covenants should be valued. Since the critical areas stewardship plan provision would only apply to properties that are 10 acres or larger, she questioned how the City would deal with trees being cut from individual private properties within critical areas.

Commission Deliberation and Final Recommendation on Proposed Hazardous Tree Ordinance

Chair Piro reminded the Commission that a motion was put on the floor at the last meeting that still needs to be voted on at some point. He also reminded the Commission that new language was proposed by staff subsequent to the motion on the floor.

Commissioner Broili referred to Item "i" on Attachment A and asked staff to explain how the City would track improved trails over time, and at what point the process would take place. Would the City keep a permanent record of trails? Mr. Tovar said that a trail could be identified at the time an

application for a stewardship plan is submitted. While property owners could wait until they have a hazardous tree situation, he would encourage them to let the City know about trails as soon as possible. Once information has been submitted to the City, it would be digitized and identified on the City's base map as a recognized trail.

Commissioner Wagner suggested that the list of targets contained in the proposed ordinance seems redundant since the same information is included on the Tree Evaluation Form. Mr. Tovar said that many citizens have raised questions about what portions of a larger critical area would be considered a "target."

Commissioner Hall pointed out that the revised proposal would require an arborist to conduct an evaluation of a tree. It would also give the Director the discretion to make the determination on whether or not it is a hazard. He asked if the proposal includes any guidelines or provisions to indicate the required level of evaluation, and how the Director would ensure the consistent application of his discretion over time. Mr. Tovar explained that all the arborists on the City's list would likely interpret the facts somewhat differently. But if all the reports are submitted to the same decision maker, there would be a consistent control point.

Commissioner Wagner suggested that instead of the Director making a final call and having the City take on the liability, it would be more appropriate to have a second arborist evaluate the situation. Mr. Tovar recalled that citizens expressed a concern that the review process not be redundant. Therefore, staff recommends that a second arborist opinion only be required if the Director deems it necessary.

Vice Chair Kuboi pointed out that there are still elements of the proposed language that are not clear, such as how trails can be defined and how the approved arborist list would be created and maintained. He asked at what point in the process these additional elements would be defined. Mr. Tovar said the Commission could decide they want all of the details worked out before making a recommendation to the City Council or they could forward a recommendation on the proposed language and rely on the City administrators to address the details. He pointed out that staff creates a number of forms, procedures and checklists administratively to enforce other parts of the codes where there is no specific statutory direction.

Commissioner Broili referred to Item "h" of Attachment A and asked if it would be appropriate to include language to make it clear that payment for the arborist would be made by the City and reimbursed by the property owner. This would make it clear that the arborist is responsible to report to the City and not the applicant. Mr. Tovar advised that, typically, when cities use a consultant as part of a three-part contract, the applicant would pay the City, the City would pay the consultant and the consultant would report to the City.

COMMISSIONER HALL WITHDREW HIS MAIN MOTION FROM MAY 18TH TO RECOMMEND APPROVAL OF THE PROPOSED CODE AMENDMENT LANGUAGE REGARDING HAZARDOUS TREES. COMMISSIONER BROILI WITHDREW HIS SECOND.

Commissioner Pyle referred to Items “h” and “i” on Attachment A, and suggested that the two items conflict with each other as to who would have the ultimate authority to grant approval for removal of a tree. Item “h” implies that the final determination would be granted to the Director, but Item “i” alludes to the fact that the city-approved arborist would have the ultimate authority. Mr. Tovar agreed and suggested that Item “i” be revised to read, “Approval to cut or prune vegetation may only be given if the Director, upon the recommendation of the city-approved arborist concludes that . . .” The Commission agreed this would be an appropriate change.

Commissioner Wagner questioned if it would be appropriate to replace the word “vegetation” with “trees” to be consistent with the other sections of the proposed language. Commissioner Broili expressed his belief that the underbrush and other vegetation could be just as important as trees to the functionality of a slope in a critical area. Commissioner Hall agreed and pointed out that the hazardous tree provisions are intended to apply citywide to all hazardous trees inside or outside of critical areas and would not alter the protection of critical areas as provided for in the Critical Areas Ordinance. Mr. Torpey agreed that nothing in the hazardous tree provisions would override the protections identified in the Critical Areas Ordinance. The Commission agreed that “vegetation” should be replaced with “tree” in Item “i” of Attachment A.

COMMISSIONER HALL MOVED THAT THE PLANNING COMMISSION RECOMMEND TO THE CITY COUNCIL STAFF’S JUNE 1ST RECOMMENDED PROPOSED CODE LANGUAGE REGARDING HAZARDOUS TREES (20.50.310) WITH THE FOLLOWING AMENDMENTS TO SECTION 20.50.310.a.1.I: STRIKE “VEGETATION” AND INSERT “TREES;” UN-STRIKE “DIRECTOR” AND INSERT “UPON THE RECOMMENDATION OF THE” [upon the recommendation of the City approved arborist]. COMMISSIONER BROILI SECONDED THE MOTION.

Commissioner Hall emphasized the importance of having the Planning Commission enter their findings and conclusions into the record to support their motions. He suggested the following findings:

- Some members of the public expressed support of the staff proposal, and some opposed it. Some indicated they would support the proposal if it had more stringent conditions for removal of a hazardous tree. Others indicated they would support it if it had less stringent conditions.
- The record supports the finding that removing hazardous trees has the potential to reduce hazards to human life, health and property.
- The record also supports the finding that cutting trees in steep slopes has the potential to reduce slope stability and possibly create a hazard to human life, health and property.
- Cutting trees anywhere in the City, inside or outside of critical areas, has the potential to degrade ecosystems and the natural environment and to alter the character of Shoreline and its treescape.

Commissioner Hall concluded that the staff’s proposal strikes a careful balance between the goal of protecting human life, health and property from the hazards of falling trees and the goal of protecting

human life, health and property, as well as the natural environment, from the consequences of cutting trees both inside and outside of critical areas in the City of Shoreline.

Commissioner Pyle indicated his support of Commissioner Hall's findings and conclusions. However, the proposed language does not address circumstances where a hazardous tree becomes a serious threat and the property owner does not have time to contact the City's Customer Response Team and go through the process of obtaining the necessary approval to remove the tree. Commissioner Harris suggested that if there were a significant storm, a property owner would likely experience a delay in finding someone to cut the tree down, as well.

Commissioner McClelland said it is important for the City to make an effort to inform the residents of Shoreline of the new Hazardous Tree Ordinance. This could be as simple as a brochure or information on the City's website. They should not just assume that most people would know about the ordinance without being specifically informed.

Commissioner Phisuthikul reminded the Commission that the provision would only apply to properties where six significant trees have already been removed within a three-year period. Commissioner Hall agreed, but pointed out that the "six tree" provision would only apply to properties that are outside of critical areas.

Commissioner Harris clarified that, as per the proposed language, the City would provide a list of numerous arborists. Mr. Tovar said he anticipates the staff would use a recruitment process to identify qualified arborists. This would likely include an interview process to find out about their qualifications, their availability and their experience. The City's Forester would likely participate in the selection process. Commissioner Harris asked if the City would establish a pre-set fee with each of the arborists on the list. Mr. Tovar said this would likely be spelled out in a three-party contract that all of the arborists on the list would sign. Commissioner Harris said he would prefer that the issue of monetary compensation be between the arborist and the applicant rather than mandated by the City. Mr. Tovar said he would prefer a set fee so an arborist would not be influenced by how much he/she is getting paid.

Closure of Public Hearing on Proposed Hazardous Tree Ordinance

COMMISSIONER BROILI MOVED THAT THE COMMISSION CLOSE THE PUBLIC HEARING ON THE HAZARDOUS TREES PORTION OF THE HEARING. COMMISSIONER HARRIS SECONDED THE MOTION.

Commissioner Hall asked that when the staff prepares findings and conclusions for the City Council's review, they should add the finding that public notice was provided, that the proposed amendments were consistent with the topical area that was discussed and properly publicly noticed, that the changes made by the Commission were designed as improvements, and that there would be adequate opportunity for additional public comment and notice when the item comes before the City Council in a legislative public hearing.

Vice Chair Kuboi pointed out that if the Commission were to close the hearing for the proposed Hazardous Tree Ordinance, they would not be able to further direct staff to craft specific language about how arborist lists or trails would be defined. These details would have to be developed after the fact, with no involvement from the Commission. Chair Piro said his interpretation is that after the public hearing is closed, the Commission would still have the ability to direct staff to do additional work.

THE MOTION TO CLOSE THE PUBLIC HEARING CARRIED UNANIMOUSLY.

Continued Commission Deliberation and Recommendation on Proposed Hazardous Tree Ordinance

COMMISSIONER WAGNER MOVED THAT THE COMMISSION STRIKE ALL OF “c” IN 20.50.310.a.1 AND STRIKE “OR CLEARING VEGETATION” FROM “d.” COMMISSIONER PYLE SECONDED THE MOTION.

Mr. Tovar pointed out that if Item “c” were removed, he would not necessarily have the authority to require that a report be done by the City’s forester. He added that the term “peer review” does not appear in the draft Hazardous Tree Ordinance, but it is used in the draft language for Critical Area Stewardship Plans. He recommended that if the Commission takes Item “c” out of the draft Hazardous Tree Ordinance, they should place it in the draft Critical Area Stewardship Plan Ordinance, instead.

Commissioner Phisuthikul said he would be in favor of retaining Item “c”, as written, since this would allow the Director to use peer review (a third party), if necessary, when making final decisions regarding hazardous trees, as well. Commissioner Harris recalled that the intent of creating a list of approved arborists was to eliminate the City’s need for additional peer review. Commissioner Pyle said his understanding of the proposed language is that the Director could go to a third party (the City’s forester or another arborist on the approved list) to review the submitted application. However, the cost of the third party review would be the City’s responsibility. Commissioner McClelland reminded the Commission that the term “peer review” is no longer included in the proposed Hazardous Tree Ordinance, so there is no need to retain Item “c”.

CHAIR PIRO PROPOSED A FRIENDLY AMENDMENT TO STRIKE ALL OF “c” FROM 20.50.310.a.1 AND INSERT THE LANGUAGE INTO 20.80.087, THE CRITICAL AREAS STEWARDSHIP PLAN SECTION OF THE DEVELOPMENT CODE. COMMISSIONERS WAGNER AND PYLE ACCEPTED THE FRIENDLY AMENDMENT.

THE MOTION, AS AMENDED, WAS APPROVED 8-1, WITH COMMISSIONER PHISUTHIKUL VOTING IN OPPOSITION.

Vice Chair Kuboi asked staff to explain how a trail would be documented for the purpose of applying the proposed language. Mr. Tovar explained that if the proposed language were adopted by the City Council, staff would develop a form for this purpose. An applicant would be asked to submit a scale drawing or map, indicating the location and alignment of the trail. Once a trail has been approved by staff, it would be identified on the City’s digitized GIS map as an improved trail. Staff could consult the

map whenever someone submits a Hazardous Tree Form. Vice Chair Kuboi said that, in theory, it would be possible for someone to construct a trail near a tree that has some hazardous conditions just to create a target situation that would allow them to cut the tree down. There is nothing in the proposed language that would enable the City to establish whether or not the trail was in place before the tree reached a hazardous situation. Mr. Tovar said that when reviewing trail forms, he would require a property owner to demonstrate that the trail is used on a frequent basis.

Commissioner Pyle cautioned against adding improved trails to the City's GIS mapping system, since this could end up degrading the quality of the GIS system. However, GPS mapping or legal descriptions of the trails might be useful. It would also be useful to hand sketch the trails and attach the drawings to titles.

Commissioner Wagner expressed her concern with the language regarding "recreational trails." She suggested that it would be duplicative to identify the target as part of the tree evaluation form, and then have separate language in the proposed language to define what a target is. She suggested that the language in the regulation should be illustrative and the determination should be based on the risk assessment form.

The Commission discussed the idea of eliminating the list in Item "i" of Attachment A. It was suggested that, instead, the section should refer to the Tree Evaluation Form, which is straight forward. Mr. Torpey said that, from an administrative perspective, without listing the actual targets, anything could be considered a target. Chair Piro cautioned against referencing a form in the code language. The majority of the Commission concurred.

COMMISSIONER WAGNER MOVED TO UN-STRIKE "RECREATIONAL TRAILS" FROM 20.50.310.A.1.i AND STRIKE THE STAFF'S INSERTED LANGUAGE "AND ANY TRAIL AS PROPOSED BY THE PROPERTY OWNER AND APPROVED BY THE DIRECTOR FOR PURPOSES OF THIS SECTION." COMMISSIONER HALL SECONDED THE MOTION.

Commissioner Hall noted that on May 18th, he made a motion to strike "recreational trails," but the motion failed unanimously. He took that as the Commission's intent to retain the term. In the staff report, it was noted that trails are defined elsewhere in the code and are used in the Parks and Recreation Comprehensive Plan.

THE MOTION CARRIED 5-2-2, WITH COMMISSIONERS HALL, HARRIS, MCCLELLAND, WAGNER AND PIRO VOTING IN FAVOR AND COMMISSIONERS PHISUTHIKUL AND PYLE VOTING AGAINST. COMMISSIONERS BROILI AND KUBOI ABSTAINED FROM VOTING.

Commissioner Pyle said his understanding of the motion is that Item "i" would revert back to the original text. Commissioner Wagner explained the intent of her motion.

COMMISSIONER HALL MOVED THAT THE COMMISSION RECONSIDER THEIR VOTE ON THE PREVIOUS MOTION. COMMISSIONER PYLE SECONDED THE MOTION. THE MOTION TO RECONSIDER WAS APPROVED UNANIMOUSLY.

COMMISSIONER WAGNER MOVED THAT THE COMMISSION UN-STRIKE "RECREATIONAL TRAILS" FROM 20.50.310.A.1.i. COMMISSIONER PYLE SECONDED THE MOTION. THE MOTION CARRIED, 6-2-1, WITH COMMISSIONERS HARRIS, MCCLELLAND, PHISUTHIKUL, PYLE, WAGNER AND PIRO VOTING IN FAVOR AND COMMISSIONERS HALL AND KUBOI VOTING AGAINST. COMMISSIONER BROILI ABSTAINED.

THE MAIN MOTION TO RECOMMEND APPROVAL OF STAFF'S JUNE 1ST RECOMMENDED PROPOSED CODE LANGUAGE REGARDING HAZARDOUS TREES (20.50.310) WAS UNANIMOUSLY APPROVED AS AMENDED.

Commission Deliberation and Final Recommendation on Proposed Critical Areas Stewardship Plans

COMMISSIONER HALL MOVED TO RECOMMEND DENIAL OF STAFF'S PROPOSED CRITICAL AREAS STEWARDSHIP PLAN IN SECTION 20.80.087 OF THE DEVELOPMENT CODE. COMMISSIONER WAGNER SECONDED THE MOTION.

Commissioner Hall pointed out that a lot of work has occurred regarding the issue of "Critical Areas Stewardship Plans." However, testimony from both sides indicates that neither side supports the current proposal. The Innis Arden Club has encouraged the Commission to send the issue back to staff for additional work with the help of club representatives. The Innis Arden Club expressed their opinion that the proposed language would make it too difficult to cut trees to protect views. Other citizens expressed opposition to the staff's proposal because it would make it too easy to cut trees in critical areas and that the proposal would create an undue hardship on the City's critical areas and ecosystems. While he doesn't know what the right answer is, he concluded that they did not hear overwhelming support from either side regarding the current proposal.

Commissioner Pyle asked regarding the current mechanism for removing trees within critical areas, aside from a critical areas reasonable use permit. Mr. Tovar said that is the only option available for removing trees in critical areas.

Chair Piro commended the staff and citizens for their hard work on the issue. However, he said he has significant concerns about the proposed language because the definition for "view" is too open ended. Therefore, he would not support bringing the issue of "view" into the Critical Areas Ordinance at this time. He concluded that he would support the motion to deny the proposed language for Critical Areas Stewardship Plans.

Commissioner Harris said he would support the motion to deny the proposed language, as well. Because the stewardship plan could be applied for various reasons throughout the City, he suggested

that the issue of view be removed. Instead, the concept should rely on science and require applicants to prove that critical areas would not be impacted. Rather than focusing on the covenants, the issue should be about whether or not critical areas could be protected and/or improved on a basis of science.

Commissioner Pyle agreed with Mr. Crook's testimony from the May 18th meeting in which he cautioned the Commission to craft an ordinance that does not attempt to resolve an internal dispute. He said he would vote against the proposed language because it has "view" strictly identified as a trigger mechanism for approaching a Critical Areas Stewardship Plan.

Commissioner McClelland expressed her concern that much of the testimony offered to the Commission was not on point with regard to the Commission's responsibility. She reminded the Commission that the City is required by law to adopt and enforce a Critical Areas Ordinance. The Commission is in a difficult and unique situation of trying to figure out how to abide by the law and still allow covenants to be effective. She expressed her belief that the proposed language does not resolve this issue. She suggested there must be some method that would allow the staff, the community and the Commission to work together to develop a solution so that it does not end up in an expensive court battle.

Commissioner Broili said he would also support the motion to deny the proposed stewardship plan language. He said he is in favor of the disparate parties coming together under the umbrella of the City to devise some type of management strategy for the reserves. He said he would not be in favor of the Commission getting involved in the middle of the dispute. Another option would be to form a group, similar to the Economic Development Task Force, to create criteria for a Critical Areas Stewardship Plan.

The Commission discussed whether it was their job to reflect state law or the community values and concerns. Commissioner McClelland said she feels the Commission's responsibility is to find the nexus between what the State law requires of the City's government and what the community feels they are entitled to. Chair Piro agreed that their job is to try to do both. Commissioner Hall pointed out that while State law requires the City to protect critical areas, it does not say how or to what extent they must do so. While the City's Critical Areas Ordinance must meet the test of best available science, state law allows communities to consider what the proper balance should be. He summarized that it is the Commission's job to reflect the values of the local community and do the best they can to make recommendations that are consistent with these values.

Chair Piro summarized that the Commission has a responsibility to deal with the issue of critical areas, and he commended the staff for trying to create ordinance language that would balance the state requirements, as well as the community values. However, it appears the Commission does not feel the proposed language is ready to move forward to the City Council for consideration.

Commissioner Phisuthikul applauded the staff for creating an excellent draft ordinance, which provides and adequate opportunity for check and balance. It also allows flexibility to the applicants to propose certain concepts if they are concerned about view protection. The proposal would not be a blanket "view protection" ordinance, but it would offer property owners an opportunity to present plans that

would result in no net loss to the critical area. If no net loss would result from the removal of a tree, the City should have some mechanism to allow this to occur.

Closure of Public Hearing on Proposed Critical Areas Stewardship Plans

COMMISSIONER HALL MOVED TO CLOSE THE PUBLIC HEARING ON CRITICAL AREAS STEWARDSHIP PLANS. COMMISSIONER BROILI SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

Continued Commission Deliberation and Final Recommendation on Proposed Critical Areas Stewardship Plans

Commissioner Hall pointed out that the City's current Critical Areas Ordinance is intended to protect all critical areas throughout the City, and not just Innis Arden. He further pointed out that most of the testimony provided was not really on point with the decision before the Commission. He noted that neither the current regulations nor the proposed regulations would likely end the controversy or litigation between private parties within the community. He did not feel the proposed motion would either hinder or further any of the current private litigation.

Commissioner Pyle asked if the Commissioners would be more willing to support the draft language if the section pertaining to "views" was deleted from the proposal. The ordinance could then be applied unilaterally throughout the City. This would allow a property owner to alter a critical area if they could put together a plan that proves there would be no net loss of function or values. He noted that, with the exception of the section related to views, the remainder of the proposal is positive and would provide the staff with a tool to adequately deal with tree removal and tree management on properties regardless of use.

Commissioner Hall agreed that the "view" section is a significant challenge, but removing it would not likely resolve the issues raised by the community. Most of the opposition was against cutting trees in critical areas regardless of the purpose. He concluded that it would be difficult to craft stewardship plan language until the community is ready to accept that active management of critical areas might be acceptable.

Commissioner Pyle pointed out that one of the requirements of a critical areas reasonable use permit is actually proving there would be no net loss of functions and values. All the proposed language would do is change the process a little. It would take the Hearing Examiner out of the process and make it an administrative decision, but it would still require the same documentation. Anyone could apply for a critical areas reasonable use permit because they are under a hardship, and they would have an opportunity to present their case to the Hearing Examiner. As long as they could prove a hardship and that there would be no net loss in functions or values, their application would be approved.

Commissioner Broili expressed his belief that the City needs to do something. They need a strategy that would allow for no net loss or improve the existing functions and values. He noted that the functions and values of the City's wetlands have been badly degraded and need to be improved. He said that while they cannot get back to an old growth forest, they can obtain an urban forest that functions the

same as an old growth forest but looks different. He urged the City to take the lead and develop an Urban Forest Management Strategy that would restore the functional qualities of both the critical areas and the forested areas. Mr. Tovar invited the Commissioners to attend the town hall meetings that are scheduled of June 6th and June 14th, where the issue of Urban Forest Management would be discussed.

THE MOTION TO DENY THE STAFF'S PROPOSED CRITICAL AREAS STEWARDSHIP PLAN IN SECTION 20.80.087 OF THE DEVELOPMENT CODE WAS APPROVED 8-1, WITH COMMISSIONER PHISUTHIKUL VOTING IN OPPOSITION.

Commissioner Hall asked if the approved motion would preclude the staff from taking the proposal to the City Council for consideration. Mr. Tovar answered that because the Planning Department initiated the proposal, he would expect them to, at the very least, report to the City Council and explain how the process moved forward. The Commission's recommendation would be provided to the City Council, and the City Council would be asked to provide staff with direction on how they want them to proceed.

REPORTS OF COMMITTEES AND COMMISSIONERS

Chair Piro announced that the Puget Sound Regional Council (PSRC) is actively engaged in the public comment period for the four-county regional strategy revision of the Vision 20/20 Plan. He noted that several Commissioners attended the kick-off event. He said citizens could access and provide comments on the four alternatives being proposed by visiting the PSRC's website at www.psrc.org.

UNFINISHED BUSINESS

Mr. Tovar noted that the special meeting that was tentatively scheduled for June 29th would not be necessary.

NEW BUSINESS

There was no new business scheduled on the agenda.

ANNOUNCEMENTS

There were no additional announcements provided during this portion of the meeting.

AGENDA FOR NEXT MEETING

Chair Piro reviewed that the June 15th agenda would include two public hearings. Mr. Tovar said the hearings would be regarding two site-specific rezones. In addition, the Assistant City Manager would be present to talk to the Commission about their retreat agenda.

Commissioner Hall reminded staff that a joint meeting with the Parks Board is a priority of the Commission. Mr. Tovar suggested that the joint meeting would likely be scheduled for September 7th.

ADJOURNMENT

The meeting was adjourned at 9:52 p.m.

Rocky Piro
Chair, Planning Commission

Jessica Simulcik Smith
Clerk, Planning Commission