

**CITY COUNCIL AGENDA ITEM**  
CITY OF SHORELINE, WASHINGTON

<b>AGENDA TITLE:</b> Adoption of Ordinance No. 324, amending the Procedures and Administration for the Critical Areas
<b>DEPARTMENT:</b> Planning and Development Services
<b>PRESENTED BY:</b> Anna Kolousek, Assistant Director

**PROBLEM/ISSUE STATEMENT:**

The Planning and Development Services Department proposes to amend the procedures and administration for the critical areas in the Shoreline Development Code. The procedural amendments are the first step of updates to the critical areas as required by the Growth Management Act (GMA).

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

The City Council reviewed the proposed changes on May 5 and held a public hearing on May 12, 2003. In response to comments questioning the use of the procedural categorical exemption, staff agreed to issue a SEPA threshold determination to remove any question on this point and recommended that the decision be postponed. The Council postponed the decision on the ordinance that adopts the proposed changes until the SEPA review is completed.

The Planning and Development Services Department prepared the environmental checklist with the supplement for a nonproject action including information about the probable significant adverse environmental impacts of the proposed changes. The proposed changes, in themselves, do not permit any development – they clarify procedures for permit review, including project specific SEPA review.

On May 22, 2003, the City of Shoreline determined the proposed changes do not have significant adverse environmental impacts and issued a threshold determination of nonsignificance – DNS. Public notices of the DNS were published in the official newspapers (Seattle Times and The Shoreline Enterprise). The DNS (with the environmental checklist) have been circulated to agencies with jurisdiction in accordance with WAC 197-11-340(2). The comment period on this DNS ended on June 6, 2003.

The City received four written comments on the subject DNS. Most of the items addressed in the comment letters have been clarified by modifications to the proposed language to code amendments, Exhibit A of the proposed ordinance. Additional clarifications to the proposed procedural and administrative changes language have been made based on the May 12 Council discussion and a meeting with the Thornton Creek Alliance to follow up on the written comments submitted by their counsel for the Council meeting on May 12<sup>th</sup>.

Regarding the SEPA checklist comments: The checklist prepared for this project acknowledges that Chinook are present in Boeing, Lyon, and McAleer creeks, and in the Puget Sound. The comment letter from the Thornton Creek Alliance Legal Defense counsel states that the checklist is inadequate because it doesn't state that Chinook are present in Thornton Creek. However, the letter does not provide any reference to any additional science that would support facts other than those in the Stream Inventory that are referenced in the checklist. Additionally, the letter does not identify any additional environmental impacts from the proposed amendments. In fact, because the codes apply throughout the City and the checklist acknowledges Chinook in some waters, impacts are already acknowledged by the checklist. It appears that the Thornton Creek Alliance Legal Defense counsel does not object to the SEPA determination issued by the City's SEPA Official.

A summary table attached to this report provides the detailed index of items changed in Exhibit A (proposed for adoption tonight) from the Planning Commission Recommended Draft (dated 4/22/03). The table includes the code section number changed and a brief description regarding the proposed changed item.

#### **FINANCIAL IMPACT:**

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

#### **RECOMMENDATION**

Adopt Ordinance No. 324 with Exhibit A.

#### **ATTACHMENTS:**

- A. Ordinance No. 324 with Exhibit A
- B. SEPA Environmental Checklist
- C. Determination of Non-significance (DNS)
- D. Request for SEPA comments and distribution list
- E. SEPA comments received
- F. Responses to SEPA comments
- G. Table of items changed in Exhibit A (proposed for adoption) from the Planning Commission Recommended Draft (4/22/03)

Approved By:

City Manager  City Attorney 

**ATTACHMENT A.     ORDINANCE No. 324 WITH EXHIBIT A**

## **ORDINANCE NO. 324**

### **AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON AMENDING THE DEVELOPMENT CODE TO FURTHER CLARIFY AND ADD ADMINISTRATION AND PROCEDURES FOR CRITICAL AREAS INCLUDING AMENDING SHORELINE MUNICIPAL CODE CHAPTERS 20.10, 20.20, 20.30, AND 20.80.**

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

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

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

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

- A public comment period was advertised from February 19, 2003 to March 5, 2003.
- The proposed amendments were available for review and comment at the Planning and Development Services Department, Shoreline and Richmond Beach Libraries and the East and West Side Neighborhood Police Centers.
- The Planning Commission held a Public Hearings on the proposed amendments on March 6, March 20, April 3, and April 17, 2003 and formulated its recommendation to Council on the proposed amendments on April 17, 2003; and

WHEREAS, the City Council conducted a Public Hearing on May 12, 2003 to review the Planning Commission recommendation on the proposed amendments; and

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

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

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

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

**Section 1. Amendment.** Shoreline Municipal Code Chapters 20.10, 20.20, 20.30, and 20.80 are amended as set forth in Exhibit A, which is attached hereto and incorporated herein.

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

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

**PASSED BY THE CITY COUNCIL ON JUNE 23, 2003.**

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Mayor Scott Jepsen

**ATTEST:**

**APPROVED AS TO FORM:**

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Sharon Mattioli, CMC  
City Clerk

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Ian Sievers  
City Attorney

Date of Publication: June 26, 2003  
Effective Date: July 1, 2003

## Chapter 20.10

### General Provisions

#### 20.10.020 Purpose.

It is the purpose of this Code to:

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

#### 20.10.040 Scope.

- A. Hereafter, ~~no development~~ no building or structure shall be erected, demolished, remodeled, reconstructed, altered, enlarged, or relocated shall occur except in compliance with the provisions of this Code and then only after securing all required permits and licenses.
- B. Any building, structure, or use lawfully existing at the time of passage of this title, although not in compliance therewith, may be maintained as provided in Chapter 20.30 SMC, Subchapter 5, Nonconforming Uses and Structures.
- C. Nonproject development and land use actions, including but not limited to rezones, annexations, and the adoption of plans and programs, shall comply with the provisions of this Code.

#### 20.10.050 Roles and responsibilities.

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

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

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

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

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

The rules and procedures for proceedings before the Hearing Examiner, Planning Commission, and City Council are adopted by resolution and available from the City Clerk's office and the Department.

## Chapter 20.20

### Definitions

Development	The division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, <u>clearing, or grading; excavation, landfill, or land disturbance; changes to surface or ground waters; or and any use, change of use, or extension of the use of land.</u>
Reasonable Use	<u>The minimum use to which a property owner is entitled under applicable state and federal constitutional provision, including takings and substantive due process. Reasonable use shall be liberally construed to protect the constitutional property rights of the applicant.</u>
Qualified Professional	<u>A person with experience, training and competence in the pertinent discipline. A qualified professional must be licensed to practice in the state of Washington in the related professional field, if such field is licensed. If not licensed, a qualified professional must have a national certification in the pertinent field. If national certification in the field does not exist, the minimum qualification should be a Bachelor's Degree with ten (10) years of related professional work, or Master's Degree in the field and three (3) years of related professional work.</u>
Utility	<del>Persons or p</del> Private or municipal corporations owning or operating, or proposing to own or operate facilities, that comprise a system or systems for public service. <u>Private utilities include only these-gas, electric, telecommunications, or water companies that are subject to the jurisdiction of the state Utilities and Transportation Commission and that have not been classified as competitive by the commission.</u>



## Chapter 20.30

### Procedures and Administration

#### **20.30.040 Ministerial decisions – Type A.**

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

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

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

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

Action Type	Target Time Limits for Decision	Section
<b>Type A:</b>		
1. Accessory Dwelling Unit	30 days	20.40.120, 20.40.210
2. Lot Line Adjustment including Lot Merger	30 days	20.30.400
3. Building Permit	120 days	All applicable standards
4. Final Short Plat	30 days	20.30.450
5. Home Occupation, Bed and Breakfast, Boarding House	120 days	20.40.120, 20.40.250, 20.40.260, 20.40.400
6. Interpretation of Development Code	15 days	20.10.050, 20.10.060, 20.30.020
7. Right-of-Way Use	30 days	20.70.240 – 20.70.330
8. Shoreline Exemption Permit	15 days	Shoreline Master Program
9. Sign Permit	30 days	20.50.530 – 20.50.610
10. Site Development Permit	30 days	20.30.430
11. Variances from Engineering Standards	30 days	20.30.290
12. Temporary Use Permit	15 days	20.40.100, 20.40.540
13. Clearing and Grading Permit	60 days	20.50.290 – 20.50.370

An administrative appeal authority is not provided for Type A actions, except that any Type A action which is subject to a SEPA threshold determination not categorically exempt from environmental review under Chapter 43.21 RCW or for which environmental review has not been completed in connection with other project permits shall be appealable. Appeal of these actions together with any appeal of the SEPA threshold determination, is set forth as specified in Table 20.30.050(4).

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

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

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

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

There is no administrative appeal of Type C actions.

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

Action	Notice Requirements for Application and Decision (5), (6)	Review Authority, Open Record Public Hearing (1)	Decision Making Authority (Public Meeting)	Target Time Limits for Decisions	Section
<b>Type C:</b>					
1. Preliminary Formal Subdivision	Mail, Post Site, Newspaper	PC (3)	City Council	120 days	20.30.410
2. Rezone of Property(2) and Zoning Map Change	Mail, Post Site, Newspaper	PC (3)	City Council	120 days	20.30.320
3. Special Use Permit (SUP)	Mail, Post Site, Newspaper	PC (3)	City Council	120 days	20.30.330
4. Critical Areas Special Use Permit	Mail, Post Site, Newspaper	HE (4)	HE (4) City Council	120 days	20.80.30.090.33
5. Critical Areas Reasonable Use Permit Approval	Mail, Post Site, Newspaper	HE (4)	HE (4)	120 days	<del>20.80.120</del> 20.30.336
6. Final Formal Plat	None	Review by the Director – no hearing	City Council	30 days	20.30.450
7. SCTF – Special Use Permit	Mail, Post Site, Newspaper (7)	PC (3)	City Council	120 days	20.40.505

(1) Including consolidated SEPA threshold determination appeal.

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

(3) PC = Planning Commission

(4) HE = Hearing Examiner

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

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

(7) Notice of application shall be mailed to residents and property owners within one-half mile of the proposed site.

#### **20.30.080 Preapplication meeting.**

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

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

Preapplication meetings are required prior to the neighborhood meeting.

The Director shall specify submittal requirements for preapplication meetings, which shall include a critical areas checklist. Plans presented at the preapplication meeting are nonbinding and do not “vest” an application.

#### **20.30.110 Determination of completeness.**

A. An application shall be determined complete when:

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

B. Within 2 days of receiving a permit application for Type A, B and/or C applications, the City shall mail a written determination to the applicant stating whether the application is complete, or incomplete and specifying what is necessary to make the application complete. If the Department fails to provide a determination of completeness, the application shall be deemed complete on the twenty-ninth day after submittal.

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

D. The determination of completeness shall not preclude the City from requesting additional information or studies if new information is required or substantial changes are made to the proposed action.

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

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

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

1. The variance is necessary because of the unique size, shape, topography, or location of the subject property;
2. The strict enforcement of the provisions of this title creates an unnecessary hardship to the property owner;
3. The subject property is deprived, by provisions of this title, of rights and privileges enjoyed by other properties in the vicinity and under an identical zone;
4. The need for the variance is not the result of deliberate actions of the applicant or property owner, including any past owner of the same property;
5. The variance is compatible with the Comprehensive Plan;
6. The variance does not create a health or safety hazard;
7. The granting of the variance will not be materially detrimental to the public welfare or injurious to:
  - a. The property or improvements in the vicinity, or
  - b. The zone in which the subject property is located;
8. The variance does not relieve an applicant from:
  - a. Any of the procedural or administrative provisions of this title, or
  - b. Any standard or provision that specifically states that no variance from such standard or provision is permitted, or
  - c. Use or building restrictions, or
  - d. Any provisions of the critical areas development standard overlay district requirements, except for the required buffer widths;
9. The variance from setback or height requirements does not infringe upon or interfere with easement or covenant rights or responsibilities;
10. The variance does not allow the establishment of a use that is not otherwise permitted in the zone in which the proposal is located; or
11. The variance is the minimum necessary to grant relief to the applicant.

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

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

~~A. The applicant, public agency or utility shall apply to the Department and shall make available to the Department all related project documents such as permit applications to~~

other agencies, special studies and SEPA documents. The Department shall prepare a recommendation to the Hearing Examiner.

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

1. That ~~the~~ application of the critical areas development standards, Chapter 20. 0 SMC, would unreasonably restrict the ability of the public agency or utility to provide services to the public; and proposed special use is in the public benefit;
2. There are ~~is~~ no other practical alternatives to the proposed development which proposal by the public agency or utility that would cause less impact on the critical area; and
3. The proposal minimizes the impact on identified critical areas based on the implementation of adaptive management plans.
3. The proposed development does not create a health or safety hazard on or off the development site, will not be materially detrimental to the property or improvements in the vicinity; and
4. This special use permit process shall not allow the use of the following critical areas for regional retention/detention facilities except where the Hearing Examiner makes a finding that the facility is necessary to protect public health and safety or repair damaged natural resources:
  - a. Type I streams or buffers;
  - b. Type I wetlands or buffers with plant associations of infrequent occurrence; or
  - c. Type I or II wetlands or buffers which provide critical or outstanding habitat for herons, raptors or State or Federal designated endangered or threatened species unless clearly demonstrated by the applicant, using best available science, that there will be no impact on such habitat.

**20.8030.120-336 Critical areas reasonable use permit provision (Type C action).**

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

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

1. The application of the development standards would deny all reasonable use of the property; and
2. There is Nno other reasonable use of the property with less impact on the critical area and the buffer is feasible or possible; and
2. ~~There are no feasible and reasonable on-site alternatives to the activities proposed, such as possible changes in site layout, reductions in density and similar factors; and~~
3. Any alterations to the critical area would be the minimum necessary to allow for reasonable use of the property~~The proposed activities, as conditioned, will minimize to the greatest extent possible potential impacts to the affected critical areas; and~~
4. The proposed development does not create a health or safety hazard on or off the development site, will not be materially detrimental to the property or improvements in the vicinity, is consistent with the general purposes of this Title and the public interest, and Aall reasonable mitigation measures have been implemented or assured.; and
5. The inability to derive reasonable economic use is not the result of the applicant's action unless the action 1) was approved as part of a final land use decision by the City of other agency with jurisdiction, or 2) otherwise resulted in a nonconforming use, lot or structure as defined in this Title.
- s. ~~The purchase price of the property or other investment derived expectations shall not be construed to be an applicant's action.~~
6. ~~The applicant must demonstrate that the use would not cause a hazard to life, health, or property. (Ord. 23 Ch. VIII 1(L), 2000).~~

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

D. Priority. When multiple critical areas and critical area buffers may be affected by the applicationimpacted, the decision making authority should consider exceptions to critical areas standards that occur in the following order of priority with number 5 having the highest protection and that result in the least overall impact:

1. Aquifer recharge areas;
2. Flood hazard areas;
31. Geologic hazard area buffers;
42. Wetland buffers;
53. Stream buffers;
64. Fish and wildlife habitat conservation area buffers; and



7.5. Geological hazard area, wetland, stream, and wildlife habitat critical areas protection standards in the order listed above in items 3 through 6.

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

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

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

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

**A. Environmental.**

1. Where environmental resources exist, such as trees, streams, ravines or wildlife habitats, the proposal shall be designed to fully implement the goals, policies, procedures and standards of the critical areas overlay district chapter, Chapter 20.80 SMC, ~~Critical Areas Special Districts~~, and the tree conservation, land clearing and site grading standards sections.
2. The proposal shall be designed to minimize grading by using shared driveways and by relating street, house site and lot placement to the existing topography.
3. Where conditions exist which could be hazardous to the future residents of the land to be divided, or to nearby residents or property, such as, flood plains, steep slopes or unstable soil or geologic conditions, a subdivision of the hazardous land shall be denied unless the condition can be permanently corrected, consistent with subsections (A)(1) and (2) of this section.
4. The proposal shall be designed to minimize off-site impacts, especially upon drainage and views.

**B. Lot and Street Layout.**

1. Lots shall be designed to contain a usable building area. If the building area would be difficult to develop, the lot shall be redesigned or eliminated, unless special conditions can be imposed that will ensure the lot is developed consistent with the standards of this Code and does not create nonconforming structures, uses or lots.
2. Lots shall not front on primary or secondary highways unless there is no other feasible access. Special access provisions, such as, shared driveways, turnarounds or frontage streets may be required to minimize traffic hazards.
3. Each lot shall meet the applicable dimensional requirements of the Code.
4. Pedestrian walks or bicycle paths shall be provided to serve schools, parks, public facilities, shorelines and streams where street access is not adequate.

#### C. Dedications.

1. The City Council may require dedication of land in the proposed subdivision for public use.
2. Only the City Council may approve a dedication of park land. The council may request a review and written recommendation from the Planning Commission.
3. Any approval of a subdivision shall be conditioned on appropriate dedication of land for streets, including those on the official street map and the preliminary plat.
4. Dedications to the City of Shoreline for the required right-of-way, stormwater facilities, open space, and easements and tracts may be required as a condition of approval.

#### D. Improvements.

1. Improvements which may be required, but are not limited to, streets, curbs, pedestrian walks and bicycle paths, critical area enhancements, sidewalks, street landscaping, water lines, sewage systems, drainage systems and underground utilities.
2. Improvements shall comply with the development standards of Chapter 20.60 SMC, Adequacy of Public Facilities.

Time limit: Approval of a preliminary formal subdivision or preliminary short subdivision shall expire and have no further validity at the end of three years of preliminary approval.

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

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

- A. The construction or location of any residential structures of four dwelling units.
- B. The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet of gross floor area, and with associated parking facilities designed for 20 automobiles.
- C. The construction of a parking lot designed for 20 automobiles.
- D. Any landfill or excavation of 500 cubic yards throughout the total lifetime of the fill or excavation; any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder.

## Chapter 20.80 Special Districts Critical Areas

### **20.80.005 Purpose.**

The purpose of this chapter is to establish specific standards, consistent with the Comprehensive Plan, for:

A. Critical areas;

B. Sub-area plans;

CB. Master plans for public facilities and institutions;

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

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

The special district shall establish regulations that in some way modify or supplement the zoning and use provisions (Chapter 20.40 SMC), the development standards (Chapter 20.50 SMC), and engineering/utility development standards

### **20.80.010 Purpose.**

- A. The purpose of this subchapter is to establish special supplemental standards for the protection of critical areas in compliance with the provisions of the Washington Growth Management Act of 1990 (Chapter 36.70A RCW) and consistent with the goals and policies of the Shoreline Comprehensive Plan in accordance with the procedures of Chapter 20.30 SMC and to supplement other requirements contained in the City of Shoreline Development Code for the purpose of regulating development of lands located within the critical area overlay district, based on the existence of critical areas as defined in this chapter.
- B. By identifying and regulating development and alterations to critical areas and their buffers it is the intent of this chapter to:
1. Protect the public from injury, loss of life, property damage or financial losses due to flooding, erosion, landslide, seismic events, soils subsidence or steep slope failure;
  2. Protect unique, fragile and valuable elements of the environment, including streams, wetlands, fish and wildlife and fish and wildlife habitat;
  3. Reduce cumulative adverse environmental impacts to water quality, wetlands, streams and other aquatic resources, fish and wildlife habitat, steep slopes and geologically unstable features;
  4. Meet the requirements of the National Flood Insurance Program and maintain the City of Shoreline as an eligible community for Federal flood insurance benefits;
  5. Ensure the long-term protection of ground and surface water quality;

6. Alert members of the public, including: appraisers, assessors, owners, potential buyers, or lessees, to the development limitations of critical areas and their required buffers;
7. ~~Provide standards, guidelines, and criteria to guide application of these critical areas overlay goals when considered with other goals and policies of the City of Shoreline Municipal Code and City of Shoreline Comprehensive Plan, including those pertaining to natural features and environmental protection;~~
87. Serve as a basis for exercise of the City's substantive authority under the State Environmental Policy Act (SEPA) and the City's Environmental Procedures (Chapter 20.30 SMC, Subchapter 8); and comply with the requirements of the Growth Management Act (Chapter 36.70A RCW) and its implementing rules; ~~and coordinate environmental review and permitting of proposals to avoid duplication and delay consistent with Chapter 36.70B RCW;~~
98. Establish standards and procedures that are intended to protect environmentally critical areas while accommodating the rights of property owners to use their property in a reasonable manner; and
109. Provide for the management of critical areas to maintain their functions and values and to restore degraded ecosystems.

**20.80.020 Description.**

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

**20.80.030 Authority.**

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

**20.80.040-020 Critical areas maps.**

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

- B. The actual presence or absence, type, extent, boundaries, and classification of critical areas shall be identified in the field by a qualified ~~consultant~~professional, and determined by the City, according to the procedures, definitions and criteria established by this chapter. In the event of any conflict between the critical area location or designation shown on the City's maps and the criteria or standards of this chapter, the criteria and standards shall prevail.
- C. The critical areas maps shall be periodically updated by the City and shall reflect any permit activity, results of special studies and reports reviewed and approved by the City, amendments to the Comprehensive Plan Environmental Element and Department identified errors and corrections.

**20.80.0250 Applicability.**

- A. Unless explicitly exempted, the provisions of this chapter shall apply to all land uses and within all zoning designation in the City of Shoreline. All persons within the City shall comply with the requirements of this chapter.
- B. The City shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water or vegetation or to construct or alter any structure or improvement without first assuring compliance with the requirements of this chapter.
- C. Approval of a development proposal pursuant to the provisions of this chapter does not discharge the obligation of the applicant to comply with the provisions of this chapter.
- D. When any provisions of any other section of the City Code conflicts with this chapter or when the provisions of this chapter are in conflict, that provision which provides more protection to critical areas shall apply unless specifically provided otherwise in this chapter or unless such provision conflicts with Federal or State laws or regulations.
- E. The provisions of this chapter shall apply to any forest practices over which the City has jurisdiction pursuant to Chapter 76.09 RCW and WAC Title 222.

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

- A. ~~The provisions of this chapter shall apply to any nonexempt activity that has a potential to impact a critical area or its established buffer. Such activities include but are not limited to:~~
  - ~~1. Removing, excavating, disturbing or dredging soil, sand, gravel, minerals, organic matter or materials of any kind;~~
  - ~~2. Dumping, discharging or filling with any material;~~
  - ~~3. Draining, flooding or disturbing the water level or water table;~~
  - ~~4. Driving pilings or placing obstructions;~~
  - ~~5. Constructing, reconstructing, demolishing or altering the size of any structure or infrastructure or the addition of any impervious surface coverage to a site located within a critical area or it's buffer, unless otherwise exempted;~~

- ~~6. Destroying or altering vegetation through clearing, grading, harvesting, shading or planting vegetation that would alter the character of a critical area, including tree cutting, brush clearing, pruning, and other methods of vegetation alteration;~~
  - ~~7. Activities that result in significant changes in water temperature, and/or the physical or chemical characteristics of water sources, including water quantity and water quality; and~~
  - ~~8. Any other activity that has a potential to impact a critical area or established buffer not otherwise exempt from the provisions of this chapter.~~
- ~~B. To avoid duplication, the following permit application, review and approvals shall be subject to, and coordinated with, the requirements of this chapter: clearing and grading; subdivision or short subdivision; building; conditional use; shoreline substantial development; variance; special use; binding site plan, and any other permits leading to the development or alteration of land.~~
- ~~C. Applications for nonproject action, including but not limited to rezones, annexations, and the adoption of plans and programs, may be required to, at the City's direction, perform studies or evaluations required by this chapter using methodologies and at a level of detail appropriate to the action proposed. (Ord. 238 Ch. VIII 1(F), 2000).~~

#### **20.80.070-030 Exemptions.**

The following activities shall be exempt from the provisions of this subchapter:

- A. Alterations in response to emergencies which threaten the public health, safety and welfare or which pose an imminent risk of damage to private property as long as any alteration undertaken pursuant to this subsection is reported to the City as soon as possible. Only the minimum intervention necessary to reduce the risk to public health, safety, or welfare and/or the imminent risk of damage to private property shall be authorized by this exemption. The City shall confirm that an emergency exists and determine what, if any, additional applications and/or measures shall be required to protect the environment consistent with the provisions of this chapter, and to repair any damage to a preexisting resource;
- B. Public water, electric and natural gas distribution, public sewer collection, cable communications, telephone, utility and related activities undertaken pursuant to City-approved best management practices, and best available science with regard to protection of threatened and endangered species, as follows:
  - 1. Normal and routine maintenance or repair of existing utility structures or rights-of-way;
  - 2. Relocation of electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less, only when required by the City of Shoreline, which approves the new location of the facilities;
  - 3. Replacement, operation, repair, modification or installation or construction in an improved City road right-of-way or City authorized private roadway of all electric

facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less;

4. Relocation of public sewer local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment or appurtenances, only when required by the City of Shoreline, which approves the new location of the facilities; and
  5. Replacement, operation, repair, modification, relocations, installation or construction of public sewer local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment or appurtenances when such facilities are located within an improved public right-of-way or City authorized private roadway.
- C. Maintenance, operation, repair, modification or replacement of publicly improved roadways and associated stormwater drainage systems as long as any such alteration does not involve the expansion of roadways or related improvements into previously unimproved rights-of-way or portions of rights-of-way;
- D. Maintenance, operation or repair of publicly improved recreation areas as long as any such activity does not involve the expansion of uses and/or facilities into a previously unimproved portion of a preexisting area. Maintenance, operation and repair of publicly improved recreation areas within designated fish and wildlife habitat areas shall be permitted if all activities are performed consistent with the development standards of this chapter, best available science or adaptive management plans as recognized by the City;
- E. Activities involving artificially created wetlands or streams intentionally created from nonwetland sites, including but not limited to grass-lined swales, irrigation and drainage ditches, detention facilities and landscape features, except wetlands, streams or swales created as mitigation or that provide or contribute to critical habitat for salmonid fishes;
- F. Activities affecting Type IV wetlands which are individually smaller than 1,000 square feet and/or cumulatively smaller than 2,500 square feet in size;
- G. Activities occurring in areas which may be considered small steep slopes (areas of 40 percent slope or greater with a vertical elevation change of up to, but not greater than 20 feet), such as berms, retaining walls, excavations and small natural slopes, and activities on steep slopes created through prior legal grading activity may be exempted based upon City review of a soils report prepared by a qualified geologist or geotechnical engineer which demonstrates that no adverse impact will result from the exemption;
- H. Site investigative work and studies necessary for preparing land use applications, including soils tests, water quality studies, wildlife studies and similar tests and investigations; provided, that any disturbance of the critical area shall be the minimum necessary to carry out the work or studies;

- I. Educational activities, scientific research, and outdoor recreational activities, including but not limited to interpretive field trips, bird watching, and use of existing trails for horseback riding, bicycling and hiking, that will not have an adverse effect on the critical area;
- J. Normal and routine maintenance and operation of existing landscaping and gardens provided they comply with all other regulations in this chapter;
- K. Minor activities not mentioned above and determined by the City to have minimal impacts to a critical area;
- L. Notwithstanding the exemptions provided by this section, any otherwise exempt activities occurring in or near a critical area should meet the purpose and intent of SMC 20.80.010 and should consider on-site alternatives that avoid or minimize impacts.

**20.80.080-040 Partial exemptions.**

- A. The following are exempt from the provisions of this chapter except for the notice to title provisions and the flood hazard area provisions, if applicable.
  - 1. Structural modification of, addition to, or replacement of structures, except single detached residences, in existence before November 27, 1990, which do not meet the building setback or buffer requirements for wetlands, streams or steep slope hazard areas if the modification, addition, replacement or related activity does not increase the existing building footprint of the structure lying within the above-described building setback area, sensitive area or buffer;
  - 2. Structural modification of, addition to, or replacement of single detached residences in existence before November 27, 1990, which do not meet the building setback or buffer requirements for wetlands, streams or steep slope hazard areas if the modification, addition, replacement or related activity does not increase the existing footprint of the residence lying within the above-described buffer or building setback area by more than 750 square feet over that existing before November 27, 1990, and no portion of the modification, addition or replacement is located closer to the critical area or, if the existing residence is within the critical area, extend farther into the critical area; and
  - 3. Maintenance or repair of structures which do not meet the development standards of this chapter for landslide or seismic areas if the maintenance or repair does not increase the footprint of the structure and there is no increased risk to life or property as a result of the proposed maintenance or repair.
- B. A permit or approval sought as part of a development proposal for which multiple permits are required is exempt from the provisions of this chapter, except for the notice to title provisions, as applicable if:
  - 1. The City of Shoreline has previously reviewed all critical areas on the site; and
  - 2. There is no material change in the development proposal since the prior review; and
  - 3. There is no new information available which may alter previous critical area review of the site or a particular critical area; and



4. The permit or approval under which the prior review was conducted has not expired or, if no expiration date, no more than five years have lapsed since the issuance of that permit or approval; and
5. The site is not located within a critical fish and wildlife habitat area; and
6. The prior permit or approval, including any conditions, has been complied with.

**20.80.090 Critical area special use permit.**

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

- A. The applicant, public agency or utility shall apply to the Department and shall make available to the Department all related project documents such as permit applications to other agencies, special studies and SEPA documents. The Department shall prepare a recommendation to the Hearing Examiner.
- B. The Hearing Examiner shall review the application and conduct a public hearing. The Hearing Examiner shall make a recommendation to the City Council based on the following criteria:
  1. That the proposed special use is in the public benefit;
  2. There are no other practical alternatives to the proposed development which would cause less impact on the critical area; and
  3. The proposal minimizes the impact on identified critical areas based on the implementation of adaptive management plans.
  4. This special use permit process shall not allow the use of the following critical areas for regional retention/detention facilities except where the Hearing Examiner makes a finding that the facility is necessary to protect public health and safety or repair damaged natural resources:
    - a. Type I streams or buffers;
    - b. Type I wetlands or buffers with plant associations of infrequent occurrence; or
    - c. Type I or II wetlands or buffers which provide critical or outstanding habitat for herons, raptors or State or Federal designated endangered or threatened species unless clearly demonstrated by the applicant, using best available science, that there will be no impact on such habitat. (Ord. 238 Ch. VIII-1(I), 2000).

**20.80.100 Permit process and application requirements.**

- A. **Preapplication Conference.** All applicants are encouraged to meet with the City prior to submitting an application subject to this chapter. The purpose of this meeting shall be to discuss the City's critical area requirements, processes and procedures; to review any conceptual site plans prepared by the applicant; to identify potential impacts to critical areas and appropriate mitigation measures; and to generally inform the applicant of any Federal or State regulations applicable to the subject site. Such conference shall be for the

convenience of the applicant and any recommendations shall not be binding on the applicant or the City.

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

~~C. Application Requirements.~~

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

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

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

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

**20.80.140045 Relationship to other regulations.**

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

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

**20.80.120 Reasonable use provision.**

- A. The standards and requirements of these regulations are not intended, and shall not be construed or applied in a manner to deny all reasonable economic use of private property. If an applicant demonstrates to the satisfaction of the Hearing Examiner that strict application of these standards would deny all reasonable economic use of a property, development may be permitted subject to appropriate conditions. Applications for reasonable use exemption shall be considered a Type C application.
- B. To obtain relief from the strict application of these standards, an applicant shall demonstrate all of the following:
1. No reasonable use with less impact on the critical area and the buffer is feasible or possible; and
  2. There are no feasible and reasonable on-site alternatives to the activities proposed, such as possible changes in site layout, reductions in density and similar factors; and
  3. The proposed activities, as conditioned, will minimize to the greatest extent possible potential impacts to the affected critical areas; and
  4. All reasonable mitigation measures have been implemented or assured; and
  5. The inability to derive reasonable economic use is not the result of the applicant's actions. The purchase price of the property or other investment derived expectations shall not be construed to be an applicant's action.
  6. The applicant must demonstrate that the use would not cause a hazard to life, health, or property. (Ord. 238 Ch. VIII 1(L), 2000).

**20.80.130-050 Notice to title.**

- A. When development is permitted in an identified critical area which is comprised of a regulated critical area and its associated buffer, the area shall be placed either in a separate tract on which development is prohibited, protected by execution of an easement, dedicated to a conservation organization or land trust, or similarly preserved through a permanent protective mechanism acceptable to the City. The location and limitations associated with the critical area shall be shown on the face of the deed or plat applicable to the property and shall be recorded with the King County Department of Records.
- B. Subdivisions, development agreements, and binding site plans which include critical areas or their buffers shall establish a separate tract (a critical areas tract) as a permanent protective measure. The plat or binding site plan for the project shall clearly depict the critical areas tract, and shall include all of the subject critical area and any required buffer, as well as additional lands, as determined by the developer. Restrictions to development within the critical area tract shall be clearly noted on the plat or plan. Restrictions shall be consistent with this chapter for the entire critical area tract, including any additional areas included voluntarily by the Developer. Should the critical area tract include several types of critical areas the developer may wish to establish separate critical areas tracts.

**20.80.140-060 Permanent field marking.**

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

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

- B. It is the responsibility of the landowner to maintain and replace if necessary all permanent field markings.

**20.80.150 Severability.**

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

**Subchapter 2. Critical Areas Overlay District – General Development Standards**

**20.80.160-070 Alteration of critical areas.**

Alteration of critical areas, including their established buffers, may only be permitted subject to the criteria in this chapter, and compliance with any Federal and/or State permits required.

**20.80.170-080 Alteration or development of critical areas – Standards and criteria.**

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

- A. Avoiding the impact altogether by not taking a certain action or parts of actions;
- B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- D. Reducing or eliminating the impact over time through preservation and maintenance operations during the life of the action; and/or
- E. Compensating for the impact by replacing or providing substitute resources or environments.

**20.80.180-090 Buffer areas.**

The establishment of buffer areas shall be required for all development proposals and activities in or adjacent to critical areas. The purpose of the buffer shall be to protect the integrity, function, value and resource of the subject critical area, and/or to protect life,

property and resources from risks associated with development on unstable or critical lands. Buffers shall consist of an undisturbed area of native vegetation established to achieve the purpose of the buffer. If the buffer area has previously been disturbed, it shall be revegetated pursuant to an approved planting plan. Buffers shall be protected during construction by placement of a temporary barricade if determined necessary by the City, on-site notice for construction crews of the presence of the critical area, and implementation of appropriate erosion and sedimentation controls. Restrictive covenants or conservation easements may be required to preserve and protect buffer areas.

**~~20.80.190 Buffer width performance standards criteria.~~**

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

- ~~A. There are special circumstances applicable to the subject property or to the intended use such as shape, topography, location or surroundings that does not apply generally to other properties which support the granting of a variance from the buffer width requirements; and~~
- ~~B. Such buffer width variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other similarly situated property but which because of special circumstances is denied to the property in question; and~~
- ~~C. The granting of a buffer width variance will not be materially detrimental to the public welfare or injurious to the property or improvement; and~~
- ~~D. The granting of a buffer width variance will not significantly impact the subject critical area.~~
- ~~E. The mitigation performance standards of the chapter have been met or exceeded. This may include enhancement, restoration or replacement of critical areas or buffers. (Ord. 238 Ch. VIII 2(D), 2000).~~

**20.80.200-100 Classification and rating of critical areas.**

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

- A. Application of the criteria contained in these regulations;
- B. Consideration of the technical reports submitted by qualified consultants ~~professionals~~ in connection with applications subject to these regulations; and
- C. Review of maps adopted pursuant to this chapter.

## Subchapter 32. Geologic Hazardous Areas

### 20.80.240 Alteration.

- A. The City shall approve, condition or deny proposals in a geologic hazard area as appropriate based upon the effective mitigation of risks posed to property, health and safety. The objective of mitigation measures shall be to render a site containing a critical geologic hazard as safe as one not containing such hazard. Conditions may include limitations of proposed uses, modification of density, alteration of site layout and other appropriate changes to the proposal. Where potential impacts cannot be effectively mitigated, or where the risk to public health, safety and welfare, public or private property, or important natural resources is significant notwithstanding mitigation, the proposal shall be denied.
- B. **Class IV Landslide Hazard Areas.** Development shall be prohibited in Class IV (very high) landslide hazards areas, except as for the installation and construction of streets and/or utilities, that have been granted by a critical areas special use permit or a critical areas reasonable use permit, consistent with the following criteria:
- ~~1. The proposed street and/or utility is identified in an adopted plan effective as of the date of adoption, such as the Comprehensive Plan, Capital Facility Plan, Capital Improvement Plan, Transportation Improvement Plan or other Utility Facility Plan. As new or amended plans are prepared and adopted, streets and utilities shall be located to avoid impact to Class IV landslide hazard areas. Where no reasonable alternative exists to locating the subject street or utility in a Class IV landslide hazard areas, review and approval of the plan shall include a discussion of other alternatives considered and the rationale for establishing streets and utilities in the subject Class IV landslide hazard areas.~~
  - ~~2. Alternative locations, which avoid impact to Class IV landslide hazard areas have been evaluated and are determined to be economically or functionally infeasible.~~
  - ~~3. A geotechnical evaluation to identify the risks of damage from the proposal, both on-site and off-site has been conducted, to ensure that the proposal will not increase the risk of occurrence of the potential geologic hazard; and to identify measures to eliminate or reduce preexisting risks.~~
  - ~~4. When no alternative exists, the impact shall be minimized by limiting the magnitude of the proposed construction to the greatest extent possible. Any impacts shall be rectified by repairing, rehabilitating, restoring, replacing or providing substitute resources consistent with the mitigation and performance standards contained in this subchapter.~~
- C. **Type II, III, IV Landslide Hazards.** Alterations proposed to Type II, III, and IV Landslide Hazards shall be evaluated by a qualified consultant professional through the preparation of the geotechnical report. However, for proposals that include no development, construction, or impervious surfaces, the City, in its sole discretion, may waive the

requirement for a geotechnical report. The recommendations contained within the geotechnical report shall be incorporated into the alteration of the landslide hazard area.

**D. Critical Seismic Hazard Areas.**

1. For one-story and two-story residential structures, a qualified ~~consultant~~professional shall conduct an evaluation of site response and liquefaction potential based on the performance of similar structures with similar foundation conditions; or
2. For all other proposals, the applicant shall conduct an evaluation of site response and liquefaction potential including sufficient subsurface exploration to determine the site coefficient for use in the static lateral force procedure described in the Uniform Building Code.

**E. Erosion Hazard Areas.**

1. Up to 1,500 square feet may be cleared on any lot in an erosion hazard area without a permit, unless the site also contains another type of critical area or any other threshold contained in SMC 20.50.320 would be exceeded.
2. All development proposals on sites containing erosion hazard areas shall include a temporary erosion and sediment control plan consistent with the requirements of the adopted surface water design manual and a revegetation plan to ensure permanent stabilization of the site. Specific requirements for revegetation plans shall be determined on a case-by-case basis during permit review and administrative guidelines shall be developed by the Department. Critical area revegetation plans may be combined with required landscape, tree retention, and/or other critical area mitigation plans as appropriate.
3. All subdivisions, short subdivisions or binding site plans on sites with erosion hazard areas shall comply with the following additional requirements:
  - a. Except as provided in this section, existing vegetation shall be retained on all lots until building permits are approved for development on individual lots;
  - b. If any vegetation on the lots is damaged or removed during construction of the subdivision infrastructure, the applicant shall be required to implement the revegetation plan in those areas that have been impacted prior to final inspection of the site development permit or the issuance of any building permit for the subject property;
  - c. Clearing of vegetation on individual lots may be allowed prior to building permit approval if the City of Shoreline determines that:
    - i. Such clearing is a necessary part of a large scale grading plan,
    - ii. It is not feasible to perform such grading on an individual lot basis, and
    - iii. Drainage from the graded area will meet water quality standards to be established by administrative rules.

## **ATTACHMENT B. SEPA ENVIRONMENTAL CHECKLIST**





## **SEPA Environmental Checklist**

### **Critical Areas: Procedural and Administrative Update**

#### **A. BACKGROUND**

**1. Name of proposed project, if applicable:**

Critical Areas Regulations Procedural and Administrative Update

**2. Name of applicant:**

City of Shoreline  
Planning and Development Services (PDS) Department

**3. Address and phone number of applicant and contact person:**

City of Shoreline  
1110 North 175th Street  
Shoreline, WA 98133

Anna Kolousek, PDS Assistant Director  
(206) 546-8805

**4. Date checklist prepared:**

May 19, 2003

**5. Agency requesting checklist:**

City of Shoreline Planning and Development Services Department

**6. Proposed timing or schedule (including phasing, if applicable):**

Adoption of procedural and administrative critical areas regulations revisions is anticipated to occur in June 2003.

**7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.**

Subsequent to the code revisions proposed in this project, the City anticipates reviewing, and revising as necessary, the critical areas protection standards. This upcoming review and potential update would be separate from this action and require additional review under SEPA.

**17544 Midvale Avenue North, Shoreline Washington 98133-4921**

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[PDS@ci.shoreline.wa.us](mailto:PDS@ci.shoreline.wa.us)

[mrsc.org](http://mrsc.org)

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

Final Draft of the Stream Basin Characterization Study, 2003  
Lake Washington/Cedar/Sammamish Watershed (WRIA 8) Near-Term Action Agenda, 2002  
Shoreline Comprehensive Plan, 1998  
Shoreline Comprehensive Plan Final Environmental Impact Statement, 1998  
Shoreline Comprehensive Plan Draft Environmental Impact Statement, 1997

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.

None known.

10. List any government approvals or permits that will be needed for your proposal, if known.

Implementation of the proposed code revisions requires adoption by the Shoreline City Council.

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

The City of Shoreline seeks to update its critical areas regulations consistent with the state Growth Management Act requirement to review and update development regulations. Critical areas regulations protect environmentally sensitive areas, including wetlands, streams, habitat, frequently flooded areas, aquifer recharge areas, and geologically hazardous areas.

The update to the critical areas regulations has been split into two parts, generally referred to as: (1) procedural and (2) substantive. This division has occurred to ease the process of reviewing the revisions and to allow time for the development of the science that will support any substantive changes.

The project reviewed under this SEPA environmental review is only the first of these two parts, Phase I, or generally referred to as the procedural component. This project will revise the procedural and administrative components of the critical areas regulations; result in reorganization of some sections; consolidate redundant administrative procedures; eliminate buffer variances; and change the criteria of the critical areas reasonable use permit and the critical areas special use permit. Changes to the critical areas special use permit would narrow its applicability so that it only allows development by public agencies and utilities. The revisions to the critical areas reasonable use permit, which would allow only that minimum level of development that is protected under the U.S. Constitution, are proposed to increase consistency with reasonable use case law. The proposed code revisions are attached.

At this time, no changes are proposed to the critical areas protection standards, such as buffers, which are generally referred to as the substantive sections. The critical areas protection standards will be reviewed and may be revised during a subsequent update process. At that time an additional SEPA environmental review will be conducted.

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12. **Location of the proposal.** Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

The critical areas regulations are applicable throughout the City of Shoreline, Washington.

**B. ENVIRONMENTAL ELEMENTS**

**1. Earth**

a. General description of the site (circle one): Flat, rolling, hilly, steep slopes, mountainous, other .....

b. What is the steepest slope on the site (approximate percent slope)?

The proposed revisions to the critical areas regulations are applicable throughout the City of Shoreline, which includes a variety of topography, including steep slopes.

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any prime farmland.

The City of Shoreline includes a variety of soil types.

d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.

As noted, the proposed revisions are applicable throughout the City and there are known areas of unstable soils within the City, including areas that would be regulated by the critical areas regulations.

e. Describe the purpose, type, and approximate quantities of any filling or grading proposed. Indicate source of fill.

No filling or grading will occur as a direct result of the proposed code changes. Fill or grading that may occur as development allowed under the critical areas regulations may require additional SEPA review.

f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.

No clearing, construction or use is proposed as part of this project.

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**g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?**

No new impervious surfaces are proposed as part of this project.

**h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:**

None. The critical areas protection standards, including those that apply to geologically hazardous areas, such as erosion hazards, will be maintained.

## **2. Air**

**a. What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke) during construction and when the project is completed? If any, generally describe and give approximate quantities if known.**

No new emissions are proposed as part of this project.

**b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.**

No.

**c. Proposed measures to reduce or control emissions or other impacts to air, if any:**

No air impacts are anticipated.

## **3. Water**

**a. Surface:**

**1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.**

Yes. The proposed code revisions are applicable throughout the City of Shoreline, which includes Puget Sound shoreline, Boeing Creek, Thornton Creek, McAleer Creek, and other water bodies. Thornton and McAleer Creeks flow to Lake Washington. Boeing Creek flows to Puget Sound.

**2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.**

The project includes only revisions to the Shoreline Municipal Code. The project does not include any work over, in, or adjacent to water. While no changes are proposed to the stream or wetlands protection standards, the revisions proposed to the critical areas regulations will narrow the critical areas special use permit criteria, which may result in less work occurring near water bodies.

**3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.**

No fill or dredging would occur as part of this project.

**4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.**

No surface water withdrawals or diversions will occur as part of this project.

**5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.**

The proposed code revisions are applicable throughout the City of Shoreline. Relatively small portions of the City, such as some areas along the Puget Sound shoreline and along Boeing Creek, lie within the 100-year floodplain.

**6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.**

The project does not include any discharging.

**b. Ground:**

**1) Will ground water be withdrawn, or will water be discharged to ground water? Give general description, purpose, and approximate quantities if known.**

No ground water will be withdrawn and no discharging will occur as part of the project.

**2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals. . . ; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.**

No waste materials will be discharged as part of this project.

**c. Water runoff (including stormwater):**

**1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.**

This project will not create new impervious surfaces; therefore it will not directly result in surface water runoff requiring collection or disposal. Projects will continue to be required to comply with the City's stormwater regulations.

**2) Could waste materials enter ground or surface waters? If so, generally describe.**

No waste materials will be discharged as part of this project.

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d. Proposed measures to reduce or control surface, ground, and runoff water impacts, if any:

This project is not expected to directly result in any surface, ground, or runoff water impacts. Development projects will continue to be required to adhere to the City's stormwater regulations, and critical areas performance standards (including those for streams, wetlands, frequently flooded areas, and aquifer recharge areas). The proposed revisions will eliminate variances to critical areas buffer standards and may reduce the number of critical areas special use permits by narrowing the permit's applicability. These increased limitations are likely to reduce impacts to surface and ground waters that might otherwise be caused by future development activities.

#### 4. Plants

a. Check or circle types of vegetation found on the site:

<input checked="" type="checkbox"/>	deciduous tree: alder, maple, aspen, other
<input checked="" type="checkbox"/>	evergreen tree: fir, cedar, pine, other
<input checked="" type="checkbox"/>	shrubs
<input checked="" type="checkbox"/>	grass
<input checked="" type="checkbox"/>	pasture
<input type="checkbox"/>	crop or grain
<input checked="" type="checkbox"/>	wet soil plants: cattail, buttercup, bulrush, skunk cabbage, other
<input checked="" type="checkbox"/>	water plants: water lily, eelgrass, milfoil, other
<input checked="" type="checkbox"/>	other types of vegetation - underbrush

b. What kind and amount of vegetation will be removed or altered?

No vegetation is proposed to be removed or altered as part of this project.

c. List threatened or endangered species known to be on or near the site.

No known threatened or endangered vegetation species exist within the City of Shoreline.

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

No landscaping is proposed as part of this project.

#### 5. Animals

a. Circle any birds and animals which have been observed on or near the site or are known to be on or near the site:

birds: hawk, heron, eagle, songbirds, other:

mammals: deer, bear, elk, beaver, other: squirrels, rabbits, and other small mammals

fish: bass, salmon, trout, herring, shellfish, other:

A variety of birds and animals have been observed within the City of Shoreline, adjacent communities, or within the adjacent area of the Puget Sound.

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**b. List any threatened or endangered species known to be on or near the site.**

Chinook salmon, a listed endangered species, have been observed in Boeing, McAleer and Lyon Creek, in Lake Washington, and in Puget Sound waters.

Bald eagles may utilize areas along the Puget Sound or riparian areas for perches.

**c. Is the site part of a migration route? If so, explain.**

The City of Shoreline includes shoreline of the Puget Sound which may be part of migration routes of fish and water-residing mammals. The surrounding area is part of the Pacific flyway migration route for birds.

**d. Proposed measures to preserve or enhance wildlife, if any:**

Development projects will continue to be required to adhere to the City's critical areas performance standards (including those for streams and wetlands). The proposed revisions will eliminate variances to critical areas buffer standards and may reduce the number of critical areas special use permits by narrowing the permit's applicability. These increased limitations are likely to reduce impacts to fish and wildlife that might otherwise be caused by future development activities.

**6. Energy and natural resources**

**a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.**

None. The proposed code revisions are not expected to result in any change in the use of energy.

**b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.**

No.

**c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:**

This project does not include energy conservation features.

**7. Environmental health**

**a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.**

The proposed code revisions are not expected to result in any increase of environmental health hazards.

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**1) Describe special emergency services that might be required.**

None.

**2) Proposed measures to reduce or control environmental health hazards, if any:**

None necessary.

**b. Noise**

**1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?**

None.

**2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)?  
Indicate what hours noise would come from the site.**

No increased noise levels are expected to result from this project.

**3) Proposed measures to reduce or control noise impacts, if any:**

None.

**8. Land and shoreline use**

**a. What is the current use of the site and adjacent properties?**

The proposed code revisions are applicable throughout the City of Shoreline, which includes residential, commercial, religious, educational, institutional, vacant, and other land uses.

**b. Has the site been used for agriculture? If so, describe.**

The City of Shoreline is within an urban area that is not used for agriculture, although portions of the City may have had historic agricultural uses.

**c. Describe any structures on the site.**

Structures located in the City vary and range from typical single family houses to institutional buildings to large commercial buildings.

**d. Will any structures be demolished? If so, what?**

No.

**e. What is the current zoning classification of the site?**

The proposed code revisions are applicable throughout all zones within the City of Shoreline.

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**f. What is the current comprehensive plan designation of the site?**

The proposed code revisions are applicable throughout all plan designations within the City of Shoreline.

**g. If applicable, what is the current shoreline master program designation of the site?**

The western edge of the City is adjacent to the Puget Sound. The shoreline designations within the City include Suburban-High Residential, Suburban-Low Residential, and Conservation.

**h. Has any part of the site been classified as an "environmentally sensitive" area? If so, specify.**

Yes, critical areas are located at various locations in the City of Shoreline.

**i. Approximately how many people would reside or work in the completed project?**

Not applicable.

**j. Approximately how many people would the completed project displace?**

None.

**k. Proposed measures to avoid or reduce displacement impacts, if any:**

None necessary.

**l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:**

The proposed code revisions focus on procedural and administrative changes that do not directly effect land uses. Development projects will continue to be required to adhere to the City's critical areas performance standards.

**9. Housing**

**a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.**

None.

**b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.**

None.

**c. Proposed measures to reduce or control housing impacts, if any:**

None.

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Internet <http://www.ci.shoreline.wa.us>  
or [www.mrsc.org](http://www.mrsc.org)

## 10. Aesthetics

- a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?

No new structures will be built as part of this project.

- b. What views in the immediate vicinity would be altered or obstructed?

None.

- c. Proposed measures to reduce or control aesthetic impacts, if any:

None.

## 11. Light and glare

- a. What type of light or glare will the proposal produce? What time of day would it mainly occur?

None.

- b. Could light or glare from the finished project be a safety hazard or interfere with views?

No.

- c. What existing off-site sources of light or glare may affect your proposal?

None.

- d. Proposed measures to reduce or control light and glare impacts, if any:

None.

## 12. Recreation

- a. What designated and informal recreational opportunities are in the immediate vicinity?

Recreational opportunities include city parks, the Puget Sound, and regional parks in adjacent communities.

- b. Would the proposed project displace any existing recreational uses? If so, describe.

No.

- c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

None.

### 13. Historic and cultural preservation

- a. Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe.

Not applicable.

- b. Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site.

Not applicable.

- c. Proposed measures to reduce or control impacts, if any:

None.

### 14. Transportation

- a. Identify public streets and highways serving the site, and describe proposed access to the existing street system. Show on site plans, if any.

The City of Shoreline includes a comprehensive street system, including Aurora Avenue (SR99) and I-5, both major north-south transportation corridors.

- b. Is site currently served by public transit? If not, what is the approximate distance to the nearest transit stop?

Yes.

- c. How many parking spaces would the completed project have? How many would the project eliminate?

None.

- d. Will the proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? If so, generally describe (indicate whether public or private).

No.

- e. Will the project use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

The proposed code revisions will be applicable throughout the City, including rail lines. There are no significant water or air transportation facilities within the City.

- f. How many vehicular trips per day would be generated by the completed project? If known, indicate when peak volumes would occur.

None.

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**g. Proposed measures to reduce or control transportation impacts, if any:**

None.

**15. Public services**

**a. Would the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)? If so, generally describe.**

No.

**b. Proposed measures to reduce or control direct impacts on public services, if any.**

None.

**16. Utilities**

**a. Circle utilities currently available at the site: electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.**

The proposed code revisions would be applicable throughout the City of Shoreline where various utilities and services are available.

**b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.**

None.

**C. Signature**

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Name: Anna Kolousek, Assistant Director, Planning and Development Services

Signature:



Date Submitted: May 21, 2003

#### **D. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS**

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

**1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?**

The critical areas regulations do not directly regulate activities that discharge to water; create emissions to air; result in the production, storage, or release of toxic or hazardous substances; or result in noise production. SMC 20.80.480 requires buffers adjacent to streams, which may prevent or mitigate some discharges to water. Similarly, SMC 20.80.330 requires buffers adjacent to wetlands. Neither of these code sections are proposed to be revised.

**Proposed measures to avoid or reduce such increases are:**

No increases are anticipated as a result of this proposal.

**2. How would the proposal be likely to affect plants, animals, fish, or marine life?**

The critical areas regulations protect wetlands, streams, habitat, and other sensitive areas. However, the critical areas protection standards are not proposed to be changed as part of this revision. The critical areas protection standards will be reviewed and may be revised during a subsequent update process. At that time an additional SEPA environmental review will be conducted.

The revisions to the critical areas regulations proposed under this action will result in reorganization of some sections, consolidation of redundant administrative procedures, elimination of buffer variances, procedural changes, and changes to the criteria of the critical areas reasonable use permit and the critical areas special use permit.

The primary change proposed to the critical areas special use permit is for it to apply only to public agencies and utilities. Currently, the permit may be granted to any entity that provides a "public benefit."

The criteria revisions to the critical areas reasonable use permit are proposed to make the permit process more consistent with current case law and to avoid potential legal challenges. As the proposed criteria limit approvals to that where "There is no other reasonable use of the property with less impact on the critical area," they therefore only allow that minimum level of development that is protected under the U.S. Constitution.

**Proposed measures to protect or conserve plants, animals, fish, or marine life are:**

Changes to the critical areas special use permit would narrow its applicability to public agencies and utilities, thereby reducing the potential of impacts that could be allowed under this permit process. Variances to critical areas buffers are proposed to be removed under SMC 20.30.310.

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The scope of the development code, SMC 20.10.040, is proposed to be expanded to include some types of nonproject land use actions.

**3. How would the proposal be likely to deplete energy or natural resources?**

The proposed action would not have a direct impact on the consumption of energy or natural resources. Some developments may be allowed under the proposed critical areas special use permit and critical areas reasonable use permit processes. However, the revisions proposed to the critical areas special use permit are likely to limit its applicability and development allowed under the critical areas reasonable use permit would be limited to that which is constitutionally protected.

**Proposed measures to protect or conserve energy and natural resources are:**

The existing critical areas regulations include protection standards, such as stream and wetland buffers, to protect some natural resources. These protection standards are not proposed to be changed at this time.

**4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?**

As mentioned under number 2, above, the purpose of the critical areas regulations is to protect environmentally sensitive areas, including wetlands, streams, habitat, frequently flooded areas, aquifer recharge areas, and geologically hazardous areas. These regulations do not include specific protection for parks, historic or cultural sites, or farmlands.

The proposed revisions will result in reorganization of some sections, consolidation of redundant administrative procedures, elimination of buffer variances, procedural changes, and changes to the criteria of the critical areas reasonable use permit and the critical areas special use permit. The critical areas protection standards, such as buffers, are not proposed to be changed as part of this revision. The critical areas protection standards will be reviewed and may be revised during a subsequent update process. At that time an additional SEPA review will be conducted.

As discussed above, changes to the critical areas special use permit would narrow its applicability to public agencies and utilities; and the revisions to the critical areas reasonable use permit would allow only that minimum level of development that is protected under the U.S. Constitution.

**Proposed measures to protect such resources or to avoid or reduce impacts are:**

No changes to the critical areas protection standards are being proposed at this time. Opportunity for buffer variances will be eliminated and the applicability of critical areas special use permits will be narrowed.

Through better organization and improved clarity, the regulations will be easier for the public to understand and for the staff to implement. This will result in improved compliance and enforcement.

**5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?**

The critical areas regulations are intended to regulate land uses to prevent impacts to critical areas consistent with the City of Shoreline Comprehensive Plan. They do not specifically address uses in the shoreline area.

The changes proposed to the critical areas regulations would revise the critical areas procedures and organization, and the permit criteria for the critical areas special use and reasonable use permits. As mentioned above, the critical areas special use permit would be narrowed to only apply to public agencies and utilities; the critical areas reasonable use permit would only allow that minimum level of development that is protected by the U.S. Constitution. Therefore, the revisions proposed would not significantly affect land use or shoreline use.

**Proposed measures to avoid or reduce shoreline and land use impacts are:**

The proposed revisions would not directly impact the shoreline use or land use.

**6. How would the proposal be likely to increase demands on transportation or public services and utilities?**

The proposed code revisions would have no direct impact on transportation, public services, or utilities.

**Proposed measures to reduce or respond to such demand(s) are:**

Not applicable.

**7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.**

The critical areas regulations, in part, implement the critical areas protection requirements of the Growth Management Act. They also help meet the intent of compliance with the ESA requirement to not harm endangered species. The procedural and administrative revisions proposed are designed to improve compliance with the Growth Management Act and state requirements for local project review.

Revisions proposed to the critical areas reasonable use permit criteria are intended to improve consistency with case law regarding "reasonable use" and "takings." The Fifth Amendment of the U.S. Constitution states that property cannot be taken without due process and just compensation. The reasonable use permit allows for "reasonable" use, as defined by the courts, of property as allowed under the Constitution, but would otherwise be prohibited by the critical areas protection standards.

## **ATTACHMENT C. DETERMINATION OF NON-SIGNIFICANCE**



## **CITY OF SHORELINE**

### **PLANNING & DEVELOPMENT SERVICES DEPARTMENT**

**WAC 197-11-970**

#### **Determination of Non-Significance (DNS)**

##### **Description of Proposal:**

The City of Shoreline seeks to update its critical areas regulations consistent with the state Growth Management Act requirement to review and update development regulations. Critical areas regulations protect environmentally sensitive areas, including wetlands, streams, habitat, frequently flooded areas, aquifer recharge areas, and geologically hazardous areas.

The update to the critical areas regulations has been split into two parts, generally referred to as: (1) procedural and (2) substantive. This division has occurred to ease the process of reviewing the revisions and to allow time for the development of the science that will support any substantive changes.

The project reviewed under this SEPA environmental review is only the first of these two parts, Phase I, or generally referred to as the procedural component. This project will revise the procedural and administrative components of the critical areas regulations; result in reorganization of some sections; consolidate redundant administrative procedures; eliminate buffer variances; and change the criteria of the critical areas reasonable use permit and the critical areas special use permit. Changes to the critical areas special use permit would narrow its applicability so that it only allows development by public agencies and utilities. The revisions to the critical areas reasonable use permit, which would allow only that minimum level of development that is protected under the U.S. Constitution, are proposed to increase consistency with reasonable use case law. The proposed code revisions are attached.

At this time, no changes are proposed to the critical areas protection standards, such as buffers, which are generally referred to as the substantive sections. The critical areas protection standards will be reviewed and may be revised during a subsequent update process. At that time an additional SEPA environmental review will be conducted.

##### **Proponent:**

City of Shoreline

##### **Location of Proposal, including Street Address:**

Citywide.

**Lead Agency:**

City of Shoreline Planning and Development Services Department

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030 (2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

**This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for 15 days from the date below. Comments on the DNS must be submitted by 5:00 p.m. local time Friday, June 6, 2003.**

**Responsible Official:** Tim Stewart

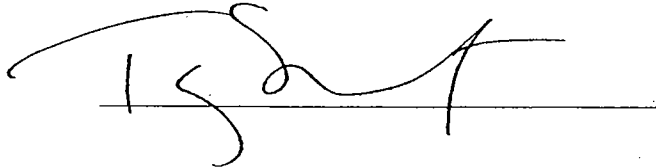
**Position/Title:** Director of Planning & Development Services

**Address:** City of Shoreline  
17544 Midvale Ave N  
Shoreline, WA 98133

**Phone:** (206) 546-1811

**Date:** May 22, 2003

**Signature:**

A handwritten signature in black ink, appearing to be 'T. Stewart', written over a horizontal line.

You may file appeals relating to this determination under procedures of RCW 36.70A.290 to the Growth Management Hearings Board within 60 days of publication of the ordinance adopting the proposed Critical Areas Procedural and Administrative Updates.

**ATTACHMENT D. REQUEST FOR SEPA COMMENTS AND  
DISTRIBUTION LIST**



## REQUEST FOR SEPA COMMENTS

NAME OF PROJECT: **Critical Areas: Procedural and Administrative Updates**

SITE ADDRESS: **Citywide**

The Determination of Non-significance is enclosed for your information. **The checklist is available upon request if not provided with your copy of the DNS.**

Routed to the agencies on May 22, 2003 (See attached list of agencies)

If you have any questions, please contact: **Anna Kolousek, Assistant Director, Planning and Development Services, City of Shoreline, at (206) 546-8805, OR**  
e-mail: [akolouse@ci.shoreline.wa.us](mailto:akolouse@ci.shoreline.wa.us)

Return your comments to:  
**Planning and Development Services  
City of Shoreline  
17544 Middle Ave. N.  
Shoreline, WA 98133**

Project Name: **Critical Areas: Procedural and Administrative Updates**

Comments are due by: **June 6, 2003**

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### FOR USE BY AGENCY RESPONDING TO REQUEST FOR SEPA COMMENTS

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☐ No Comment

☐ Comments Below or Attached

Agency making comments: \_\_\_\_\_

Comments prepared by: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Agency Comments:

Barbara Ritchie  
Environmental Review Section  
Department of Ecology  
P.O. Box 47703  
Olympia, WA 98504-7703

Attn: Ike Nwankwo  
WA State Office of Community  
Development  
P.O. Box 48350  
Olympia, WA 98504-8350

Town of Woodway  
Attn: City Clerk  
23920 113<sup>th</sup> PL. W.  
Woodway, WA 98020

DOH – Division of Drinking Water  
Environmental Documents Reviewer  
PO Box 47822  
Olympia, WA 98504-7822

Puget Sound Regional Council  
1011 Western Avenue, Suite 500  
Seattle, WA 98104-1035

SEPA Responsible Official  
Department of Construction and Land Use  
City of Seattle  
700 Fifth Avenue, Suite 2000  
Seattle, WA 98104-5070

Attn: Dale Morimoto  
Department of Transportation  
15700 Dayton Ave.  
P.O. Box 330310  
Shoreline, WA 98133

U.S. Army Corps of Engineers  
Seattle District  
P.O. Box C-3755  
Seattle, WA 98124

City of Mountlake Terrace  
Attn: SEPA Responsible Official  
23024 58<sup>th</sup> Ave, West  
Mountlake Terrace, WA 98043

National Marine Fisheries Service  
7600 Sand Point Way NE  
Seattle, WA 98115-0070

Tulalip Tribal Council  
Attn: Peter Mills  
6700 Totem Beach Road  
Marysville, WA 98270

Seattle Public Utilities  
Drainage and Wastewater Division  
Dexter Horton Building, 11<sup>th</sup> Floor  
700 - 5<sup>th</sup> AV STE 4900  
Seattle, WA 98104-5004

SEPA Responsible Official  
Puget Sound Clean Air Agency  
110 Union Street Suite 500  
Seattle, WA 98101

Kathy Taylor  
Puget Sound Action Team  
(Formerly PS Water quality Action Team)  
P.O. Box 40900  
Olympia, WA 98504-0900

City of Edmonds  
Attn: Robert Chave  
121 5<sup>th</sup> Ave. North  
Edmonds, WA 98020

Mr. Eric Pentico  
Department of Fish and Wildlife  
16018 Mill Creek Boulevard  
Mill Creek, WA 98012

Ms. Shirley Marroquin  
Environmental Planning Supervisor  
King County Wastewater Treatment Div.  
201 South Jackson St., MS KSC-NR-0505  
Seattle, WA 98104-3855

Department of Community Development  
Attn: SEPA Responsible Official  
City of Lynnwood  
19100 44th Ave W.  
Lynnwood, WA 98046

Parks and Recreation Commission  
7150 Clean Water Lane  
KV-11  
Olympia, WA 98504

King County Department of Development  
and Environmental Services  
Attn: Marilyn Cox, SEPA Official  
Land Use Services Division  
900 Oaksdale Ave.  
Renton, WA 98055

Department of Community Development  
Attn: SEPA Responsible Official  
City of Bothell  
18305 - 101st Avenue NE  
Bothell, Washington 98011

David F. Dietzman  
DNR SEPA Center  
P.O. Box 47015  
Olympia, WA 98504-7015

Gary Kriedt, Senior Environmental Planner  
King County Transit Division  
Environmental Planning and Real Estate  
201 South Jackson St., MS KSC-TR-0431  
Seattle, WA 98104-3855

Department of Community Development  
Attn: SEPA Responsible Official  
City of Kenmore  
P. O. Box 82607  
Kenmore, WA 98028-0607

Attn: Karen Walter  
Muckleshoot Indian Tribe  
9015 172<sup>nd</sup> Ave. SE  
Auburn, WA 98092

SEPA Responsible Official  
Seattle/ King County Health Department  
999 Third Ave., Suite 700  
Seattle, WA 98104-4099

Attn: SEPA Responsible Official  
Seattle City Light  
700 5<sup>th</sup> Avenue, Suite 3300  
Seattle, WA 98104-5031

Tulalip Natural Resources  
Attn: SEPA Responsible Official  
7615 Totem Beach Rd.  
Marysville, WA 98271

SEPA Responsible Official  
City of Lake Forest Park  
17711 Ballinger Way NE  
Lake Forest Park, WA 98155

Community Transit  
Attn: SEPA Responsible Official  
7100 Hardeson Road  
Everett, WA 98203

Snohomish County Planning Department  
Attn: Steve Holt, Planning Director  
1<sup>st</sup> Floor, Courthouse  
Everett, WA 98201

Stu Turner, District Manager  
Shoreline Water District  
P.O. Box 55367  
Shoreline, WA 98155-0367

Shoreline Fire Department  
Attn: Chief Ron Mahler  
17525 Aurora Ave. N.  
Shoreline, WA 98133

Philip Montgomery  
Ronald Wastewater Management  
PO Box 33490  
Shoreline, WA 98133

Paul Fleming  
Shoreline School District  
18560 1<sup>st</sup> Ave. NE  
Shoreline, WA 98155

Attorneys for Thornton Creek Legal  
Defense Fund: Paul A. Kampmeier  
Smith & Lowney, P.L.L.C.  
2317 East John Street  
Seattle, WA 98112

Seattle Public Utilities – Water Division  
Attn: Jay Laughlin  
700 – 5<sup>th</sup> AV STE 4900  
Seattle, WA 98104-5004

Katherine Minsch, Thornton Creek Coord.  
Sr. Planning & Development Specialist  
Seattle Public Utilities  
Key Tower, Suite 4900  
700 Fifth Avenue  
Seattle, WA 98104-5004s

THORNTON CREEK ALLIANCE  
P.O. Box 25690  
Seattle, WA 98125

## **ATTACHMENT E.      SEPA COMMENTS RECEIVED**

1.     Richard A. Costello, State of Washington Department of Fish and Wildlife
2.     Paul A. Kampmeier, Counsel for Thornton Creek Legal Defense Fund  
(with attachments)
3.     Patty and Tim Crawford, Twin Ponds Fish Friends
4.     David Andersen, Growth Management Services Office, Washington State  
Department of Community, Trade and Economic Development



State of Washington  
**DEPARTMENT OF FISH AND WILDLIFE**

Region 4 Office: 16018 Mill Creek Boulevard - Mill Creek, Washington 98012 - (425) 775-1311

June 6, 2003

City of Shoreline  
Planning and Development Services  
ATTENTION: Tim Stewart, Director  
17544 Middle Avenue N.  
Shoreline, Washington 98133

fax 206-546-1524

Dear Mr. Stewart:

**SUBJECT: State Environmental Policy Act Document; City of Shoreline Proponent,  
Change Critical Areas Regulations, King County**

The Washington Department of Fish and Wildlife (WDFW) has reviewed the above-referenced State Environmental Policy Act (SEPA) document received on May 27, 2003, and offers the following comments at this time. Other comments may be offered as the project progresses.

The proposal states it will merely make procedural changes to the code, and "...no changes are proposed to the critical areas protection standards, such as buffers, which are generally referred to as the substantive sections." However, several changes apparently would weaken protection of stream and wetland buffers, which are vital to fish and wildlife habitat. WDFW is not only concerned that the proposal could cause diminishment of protection of fish and wildlife habitat in your immediate locale; we are also concerned the effects of the proposal could be felt regionally. Most of the streams flowing in the City of Shoreline cross into other jurisdictions on their way to the sea, and support salmon in their downstream reaches. Residents of those other jurisdictions desire to preserve and restore salmon runs, and for such efforts to be successful local governments in uphill areas need to protect water quality in the upper reaches of streams, and to protect habitat which allow migrating species to build stronger populations when they have access to the full range of their historic habitat areas. Protection of stream and wetland buffers is vital for this effort, as buffers have huge effects on water quality and the ability of fish and wildlife to successfully use aquatic habitat. The proposal may allow more environmental impacts. The cumulative impacts of individual permitting decisions can ruin regional resources.

Specific proposed wording changes which seem to weaken the code include:

1. During consideration of issuance of reasonable use permits, which allow diminishment of protection of public resources for the benefit of individual property owners, the proposed change of 20.80.120 into 20.30.336 B.2 apparently eliminates consideration of buffers when determining



that there is no other reasonable use of the property. Buffers are vital for protection of fish habitat, so this change seems to be a major and substantive change to the code, and not just a procedural change; it could allow substantial cumulative impacts to streams by permitting many small impacts to stream and wetland buffers. Many other parts of the code include wording for protection of "the critical area or buffer", "the critical area and the buffer", or "critical areas, including their established buffers". Diminishing protection of buffers with the proposed word change in this section is potentially very harmful, and we request that the code remain highly protective of buffers as well as of actual critical areas. In addition, in the existing and proposed lines B.2 of this section elimination of wording such as "no feasible...alternative" and "...such as possible changes in site layout..." seem to limit the city staff's ability to diligently enforce environmental protection rules when faced by efforts to gain exemptions to the rules. The code should force staff and applicants to search hard for alternatives to impacting buffers, even if those alternatives prevent maximum development value on specific sites.

2. The proposed elimination of 20.80.120 B.5 and its replacement with 20.30.336 B appears to potentially allow harm to resources. The existing rule states that a reasonable use permit shall be granted only if "The inability to derive reasonable economic use is not the result of the applicant's actions." Elimination of this clause seems to allow individuals to further hurt the environment by having done something non-beneficial, perhaps hurting the environment, in the past. This change seems to limit the city staff's ability to diligently enforce environmental protection rules when faced by efforts to gain exemptions to the rules.
3. The proposed changes to code apparently delete all of the places in the critical areas regulations which presently have wording similar to "In the event of any conflict between regulations, those which provide greater protection to the environmentally critical areas shall apply." This appears to be a substantive change to the code which could cause large impacts to the public resources, because it diminishes the ability of city staff to enforce strict permitting conditions on development proposals. Permitting officials can be subjected to strong pressure from developers to allow construction in buffers, so language is needed in code to enable protection of the environment. This proposed change seems to delete some of the stronger language that has been found in the past to help protect public resources from damage.
4. Elimination of 20.80.190 would move buffer diminishment decisions from variances to reasonable use permits. This seems to eliminate the wording which presently requires that "The granting of a buffer width ...[diminishment]... will not significantly impact the subject critical area." This proposed change to code seems to weaken the regulatory language that presently protects public resources. Therefore this proposed change would be substantial, and should not be included in a proposal of procedural changes.
5. In 20.30.040 the proposal eliminates the words "which may impact critical areas" from the criteria of projects which are Type A actions. Type A actions only need staff approval (by the

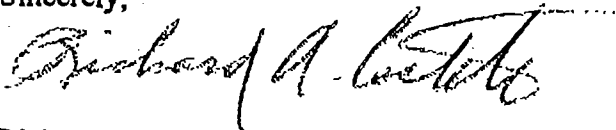
Mr. Stewart  
June 6, 2003  
Page 3

"Director"), but they include Clearing and Grading permits, building permits, and other things that could easily hurt stream functions. The code states "The decisions made by the Director under Type A actions shall be final." Apparently this means no review or appeal possibility of these staff decisions is allowable, even though the proposal would apparently allow actions "which may impact critical areas". This proposed change could be important to stream bank and buffer protection, and could lead to degradation of streams and harm to fish life. Projects which may impact critical areas should not be allowable under Type A actions. This proposed change does not appear to be merely "procedural".

Beyond those comments, the present proposal is too confusing to allow me to fully evaluate its impacts on the environment, but it appears to generally be a weakening of the wording of the City of Shoreline code which regulates development in buffers of critical areas. Weakening protection of buffers would impact the part of WDFW's mission which includes providing for "...healthy, diverse fish and wildlife populations" because buffers are vital for protecting the stream and wetland functions which fish and wildlife need. I think the confusion caused by the proposal may be the result of the attempt to separate code changes into "procedural" and "substantive" portions, with the "substantive" portions not addressed. I think if any changes to the code are needed they should be done as one effort in which the existing code and all proposed changes are clearly presented, with detailed explanations of what the changes would accomplish. The mission statement of WDFW includes the goal of having "An informed public, participating in policy development and contributing to quality decision making." I think the proposal is not consistent with this goal because the public cannot easily determine the effects the proposal would cause. I recommend that the present effort to change the code in a piecemeal manner involving "procedural" and "substantive" portions be stopped, because some of the "procedural" proposals seem to indeed have potential to diminish protection of public resources. Another effort, combining all changes including "procedural" and "substantive" should be offered for public review before any changes are made to code.

Thank you for the opportunity to provide this information.

Sincerely,

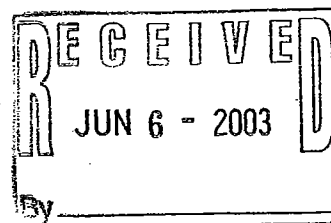


Richard A. Costello  
Regional Habitat Program Manager

cc: CTED  
SEPA Coordinator, WDFW  
SEPA Coordinator, Ecology

SMITH & LOWNEY, P.L.L.C.

2317 E. JOHN ST.  
SEATTLE, WASHINGTON 98112  
(206)860-2883, FAX (206)860-4187



FAX COVER SHEET

Including this cover sheet, this fax is 8 pages

Date: June 6, 2003

Time: 4:30 pm

To: Ms. Anna Kolousek  
Mr. Tim Stewart

Fax: (206) 546-2338 ✓  
Fax: (206) 546-8761

This document is from:

Paul Kampmeier, Of Counsel  
Smith & Lowney, PLLC

Phone (206) 860-4102

Comments:

Please accept these comments on the SEPA Checklist for the proposed revisions to the Shoreline critical areas ordinance.

Please call if there is a problem with the transmission. Thanks.

Paul Kampmeier, Of Counsel  
Smith & Lowney, PLLC

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**SMITH & LOWNEY, P.L.L.C.**

2317 EAST JOHN STREET  
SEATTLE, WASHINGTON 98112  
(206) 860-2883, FAX (206) 860-4187

June 6, 2003

**VIA FACSIMILE & FIRST CLASS MAIL**

Planning & Development Services

City of Shoreline

ATTN: Ms. Anna Kolousek

17544 Midvale Avenue North

Shoreline, Washington 98133

**RE: Comments on the SEPA Environmental Checklist/Determination of Non-Significance for proposed procedural and administrative updates to the City of Shoreline Critical Areas Ordinance.**

Dear Ms. Kolousek:

Thank you and Mr. Sievers for meeting with us yesterday to discuss the proposed code revisions and associated SEPA Environmental Checklist. As you know, Thornton Creek Legal Defense Fund has retained this firm to review those proposed revisions and to submit comments on its behalf. As with our meeting and our May 9, 2003 comment letter, we submit our comments with the hope that they will help the City revise its Ordinance in a manner that maintains or strengthens protections for the important critical areas and environmental resources within the City.

At yesterday's meeting the City seemed willing to revise many aspects of the proposed amendments that cause my client concern. Mr. Sievers also indicated that the City would consider revising the SEPA checklist or completing a supplemental checklist to ensure that development likely to result from passage of the amendments would be considered during this environmental review. Thornton Creek Legal Defense Fund truly appreciates the City's willingness to meet with us and consider our suggestions as this process proceeds. Indeed, I think we all agree that constructive dialogue between the City and its citizens is central to the efficient and effective management of City government. However, given today's deadline for submitting comments and the uncertainty surrounding which changes the City will incorporate into the amendments, these comments address the SEPA Environmental Checklist as issued on May 22. In the event the City revises the proposed amendments, the SEPA checklist, or provides a supplemental checklist, we will look forward to reviewing and commenting upon those documents.

Please consider these comments and include them with the permanent file for this matter. These comments hereby include by reference the oral comments submitted at our meeting yesterday and the written comments submitted by our May 9, 2003 letter, as if fully set forth herein. Thornton Creek Legal Defense Fund also hereby joins and incorporates by reference any and all comments submitted by Tim and Patty Crawford, the Twin Ponds Fish Friends, and the State of Washington Department of Fish & Wildlife.

**Comments specific to the SEPA Checklist and Determination of Non-Significance.**

**1. General Comments applicable to the entire SEPA Checklist.**

Thornton Creek Legal Defense Fund appreciates the time and resources the City invested in completing the SEPA Checklist for this project. However, the SEPA Checklist published by the City of Shoreline is problematic for a number of reasons. First, the SEPA checklist fails to consider cumulative impacts and the real development--the on the ground impacts--that are likely to result from passage of the proposed amendments. Throughout the SEPA Checklist the City contends that the amendments are a procedural, non-project action that will not generate real impacts to air, water, ground, animals, fish, wildlife, and other aspects of the environment. Yet the SEPA Checklist is required to include consideration of probable development likely to result from passage of the amendments. *King County v. Boundary Review Board*, 122 Wn.2d 648 (1993). Thornton Creek Legal Defense Fund hereby requests that the City revise the checklist or provide a supplemental checklist to consider the real development and critical areas impacts that are likely to result from these amendments.

Another problem with the SEPA Checklist is that it *assumes* the amendments are procedural, thereby failing to truly consider whether passage of the amendments will affect the environment. Rather than being merely procedural and administrative amendments, the proposal includes many substantive changes and reductions to critical area and critical area buffer standards. The substantive changes are identified throughout this and our May 9, 2003 comment letters. The SEPA Checklist must approach the amendments as being substantive in nature, to ensure complete protection and adequate environmental review.

For example, the deletion of many sections in Chapter 20.80, the Critical Areas overlay district, (§§ 20.80.020, 20.80.030, 20.80.050, 20.80.060, 20.80.100, 20.80.110 and 20.80.190) removes the substantive critical area standards and protections without replacing them. These sections contain critical area protection standards that are not adequately covered in the proposed changes to Chapter 20.30. Presently, the City code provides that the critical areas overlay district applies throughout the City of Shoreline to all lands containing mapped or unmapped critical areas. Further, the code provides that when the regulations in the overlay district are more restrictive than other zoning regulations, the provisions of the overlay district control. By removing the above-cited sections of the critical areas overlay district, the City is reducing substantive protections for critical areas throughout the City of Shoreline. This is contrary to the claim that the amendments are simply procedural, and also undercuts the validity of the SEPA Checklist's presumption that the critical areas protection standards are not being changed. The City must not delete these sections without informing the public and performing environmental review in the context of substantive changes to the City code.

As another example, by changing the criteria for deciding whether the City should issue reasonable and special use permits, the City in effect changes the substantive protections for critical areas and their buffers. To the extent that reasonable and special use permits are more readily available, it is reasonable to expect more development in critical areas. The SEPA Checklist should explicitly consider the development that is likely to occur given the new criteria for issuing these kinds of permits. In particular, the effects of the

Gaston project must be considered in the checklist, as there are documents now available indicating that, after the revisions are approved, the Gaston's will seek a reasonable use permit to proceed with building their home. I am including with these comments a copy of the Declaration of Michael Spence to illustrate this point.

Finally, by failing to indicate the substantive nature of the amendments in the SEPA Checklist and the public notice, the City limited public discussion and comment regarding this proposal. Thornton Creek Legal Defense Fund hereby requests that the City issue a new public notice and SEPA Checklist, clearly indicating to all that the revisions may change the substance of the critical areas protection standards. Only with full and adequate public notice can everyone involved be certain that the proposed amendments are adequately considered and reviewed before being considered by the City Council.

**2. Comments regarding particular sections of the SEPA Checklist.**

We also have concerns about particular sections of the SEPA Checklist. First, under Section B.5.b (page 7), the checklist fails to consider the impacts on Chinook salmon in Thornton Creek. There is no question that Thornton Creek supports Chinook and the SEPA Checklist should have listed and considered the impacts to those fish and their habitat. Without doing so, the checklist and resulting DNS are inadequate.

Also on page 7, in section B.5.c, the checklist fails to indicate that Thornton and Macaleer Creeks, as well as most other creeks in Shoreline, are migration routes for fish, including threatened and endangered salmon. The checklist must list and consider these important migration routes; failing to do so renders the checklist and resulting DNS inadequate.

Lastly, section D.7 (page 15) of the checklist implies that the proposed changes are consistent with the Growth Management Act and other state and federal laws. However, given the proposed removal of sections 20.80.020, 20.80.030, 20.80.050, 20.80.060, 20.80.100, 20.80.110 and 20.80.190 this simply is not the case. As discussed above, deleting these sections will reduce the substantive protections afforded critical areas and will likely leave critical areas within the City without substantive protection standards until new critical areas protections are considered sometime in the future. Thornton Creek Legal Defense Fund respectfully requests that the City maintain all of the above-cited sections until the City is prepared to revise and supplement the substantive standards protecting critical areas.

**Comments specific to Exhibit A to the SEPA Checklist (the proposed amendments).**

Thornton Creek Legal Defense Fund recognizes that the City is revising the proposed amendments to address many of the concerns raised in our May 9 comment letter. To protect my client's rights and ensure that all issues are brought before the Planning Department, much of what follows may duplicate issues raised in our June 5 meeting. Our hope is that many of the changes we discussed will be included in a revised proposal, and that many, if not all, of our concerns about the proposed amendments will be addressed.

Throughout the proposed amendments the terms "critical area" and "critical area buffer" are used inconsistently, leading to confusion about whether and what development is allowed in each area. For example, sections 20.30.080 (Exhibit A, page 9) and 20.30.560 (Exhibit A, page 15) make a clear distinction between a critical area and its buffer. However, the changes to Critical Areas Special Use Permit (CASUP) and Critical Areas Reasonable Use Permit (CARUP) do not make this same distinction since the buffer is not mentioned. There is simply no reference to the critical area buffer in the critical areas special and reasonable use permit sections, implying that the City will grant the permits for development in the critical area itself, but not for development in the buffer. Protecting the integrity of the buffer is integral to protecting the critical area. Moreover, if development near a critical area must occur to avoid a takings, the City should prefer that the development occur in the buffer, not the critical area itself. Thornton Creek Legal Defense Fund respectfully requests that the term "critical area" be defined to include "any associated buffers." Alternatively, the proposed amendments could be revised so that, where possible, buffers are protected as well as critical areas. In particular, "critical area buffers" should be added to Decision Criteria B.2 in (newly numbered) § 20.30.336 (Exhibit A, page 12).

Thornton Creek Legal Defense Fund also hereby requests that the City consistently use the term "qualified professional." In at least a few sections, the code refers to "qualified consultants," which is not defined in the code. See, for example, Shoreline City Code §§ 20.80.020 & .100.

Thornton Creek Legal Defense Fund still does not believe that the first sentence of Decision Criteria B.5 (CARUP page 12) should be removed. If an applicant's actions have contributed to the inability to derive reasonable use from a property, the applicant should not be rewarded with a reasonable use permit. Since this criteria only applies to the applicant's actions, and not historical changes to the property, it clearly only applies where a particular applicant took actions which caused him/her to need a reasonable use permit. The City should not draft the code to reward a property owner who takes actions that ultimately allow development in a critical area or buffer, where such development could have been avoided.

New section 20.80.040, letter B.5 (page 22) is proposed for removal from the code supposedly so that all types of critical areas are processed consistently. Treating critical fish and wildlife habitat areas the same as all other critical areas reduces the protection for these special and perhaps very limited areas in the urban environment. Fish and wildlife habitat conservation area buffers are not treated like other areas or buffers under 20.30.336 (CARUP). They are the last buffer to be considered for an exception to the critical areas standards. According to the existing code (section 20.80.280 Required buffer areas, letter C), "fish and wildlife habitat conservation areas and their associated buffers shall be placed either in a separate tract on which development is prohibited, protected by execution of an easement dedicated to a conservation organization or land trust, or similarly preserved through a permanent protective mechanism acceptable to the City." No other critical areas are given this level of protection. Fish and wildlife habitat conservation areas cannot and should not be treated the same as other critical areas and by doing so, the proposed amendments reduce the substantive protective standards for these areas.

Most of the specific requirements for the preapplication meeting in section 20.80.100 are not included in section 20.30.080, but should be. Section 20.30.080 states that the

City of Shoreline Planning & Development Services  
June 6, 2003  
Page 5 of 5

development proposal will be discussed in general terms and applicable City requirements will be identified. Section 20.80.100 now specifically states that the purpose of the meeting is to discuss the City's critical area requirements, processes and procedures, to review any conceptual site plans, identify potential impacts to critical areas and appropriate mitigation measures and to generally inform the applicant of any Federal or State regulations applicable to the subject site. The applicant is to complete a critical areas checklist prior to the meeting. A critical area report may be required. These requirements should be explicitly included in section 20.30.080 to ensure that each project applicant and the City evaluates possible impacts on critical areas and buffers. In particular, the requirement that all applicants submit a critical areas checklist should not be deleted from the code, but should be made explicit in the revised procedures governing project applications.

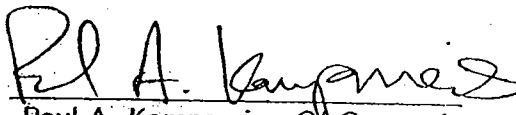
Thank you for considering these comments and our suggested changes. Our hope is that the City will carefully review our proposed revisions and incorporate our suggestions into the final amendments, as we discussed yesterday. Please add Thornton Creek Legal Defense Fund and our office to the list of interested persons for this matter, so that we both receive notice of City Council and Planning Commission meetings that will consider these issues. Please also notify us in writing when the City Council takes action on the proposed revisions.

We will look forward to reviewing your revised proposed amendments. If you have any questions or comments, please feel free to contact us at the number listed on the letterhead. As always, we would be happy to discuss these issues at your convenience.

Sincerely,

SMITH & LOWNEY, P.L.L.C.

By:

  
Paul A. Kampmeier, Of Counsel

Attorneys for Thornton Creek Legal Defense Fund

cc: client



IN THE COURT OF APPEALS, DIVISION I  
FOR THE STATE OF WASHINGTON AT SEATTLE

TIMOTHY CRAWFORD and PATRICIA  
CRAWFORD, husband and wife,

Plaintiffs/Respondents,

v.

CITY OF SHORELINE; and GASTON  
ENTERPRISES, LLC, a limited liability  
corporation doing business in the State of  
Washington,

Defendants/Appellants

Case No.: 01-2-10593-1 SEA  
COURT OF APPEALS NO.: 51849-6-I

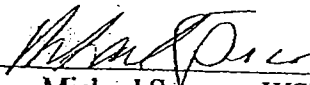
MOTION AND DECLARATION TO EXTEND  
DEADLINE TO FILE RESPONDENT'S BRIEF

COMES NOW the Respondent, through its attorney of record, Michael A. Spence, and moves the Court for an order allowing Respondent an additional 30 days in which to file its Respondent's Brief which is due to be filed on April 28, 2003. This motion is based upon the files and records herein, and upon the fact that the City of Shoreline may be considering an amendment to the City's Code rendering this appeal unnecessary. It is also based on the Declaration of Michael Spence, subjoined.

DATED this 28<sup>th</sup> day of April, 2003.

HARRISON, BENIS AND SPENCE, LLP

By

  
Michael Spence, WSBA 15885  
Attorneys for Defendant/Appellant

MOTION AND DECLARATION FOR EXTENSION  
OF TIME FOR FILING RESPONDENT'S BRIEF - 1

HARRISON, BENIS & SPENCE, LLP  
Attorneys at Law

1040 United Airlines Building  
2033 Sixth Avenue, Seattle, WA 98121-2532  
Fax 206.448.1843 Phone 206.448.0402

\*\*\*\*\*

MICHAEL A. SPENCE, declares under penalty of perjury under the laws of the State of Washington as follows:

1) I am the attorney for Defendant/Appellant Gaston Enterprises, L.L.C. in this matter and I make this declaration on personal knowledge.

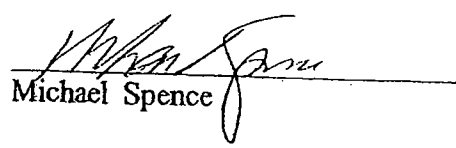
2) Within the last several weeks, I have become aware that the City of Shoreline has been considering amendments to its land use code under which my client may be able to obtain a building permit through a "reasonable use exception". I understand that these amendments are up for adoption on May 14, 2003.

3) If my client is granted a reasonable use exception, this appeal will not be necessary.

4) I therefore respectfully request an extension of the deadline for filing Respondent Gaston's brief until May 28, 2003.

5)

DATED this 28<sup>th</sup> day of April, 2003.

  
Michael Spence

MOTION AND DECLARATION FOR EXTENSION  
OF TIME FOR FILING RESPONDENT'S BRIEF - 2

HARRISON, BENIS & SPENCE, LLP

Attorneys at Law

1040 United Airlines Building

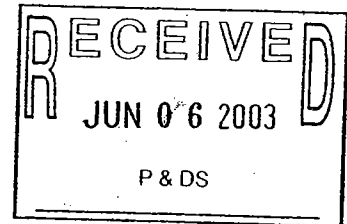
2033 Sixth Avenue, Seattle, WA 98121-2532

Fax 206.448.1843 Phone 206.448.0402



Twin Ponds Fish Friends

"Speaking out for those who can't"  
PO Box 77088 Seattle, WA. 98177 206-361-1021



## **Code Changes/ Procedural?**

I cannot think of any more concrete way to prove that a code change is actually substantial rather than "merely housekeeping" is when an attorney that has been refused by Superior Court, Obviously doesn't feel he should spend the money for his appeal so he asked the court to let him wait.

SEE: Gaston letter to Court of Appeals

Now that the process has been delayed and apparently the motion to postpone the Gaston brief has been withdrawn because; The City of Shoreline has now written a "combined brief" to include Gaston along with the City of Shoreline.

To do this the City of Shoreline had to ask the court to disregard the first brief written on behalf of the City of Shoreline and substitute it with the new "combined brief" to include Gaston. The reasons stated were economical savings. The City of Shoreline ended up writing two briefs. Who is saving money??

The court found both Gaston & The City of Shoreline in violation of our city codes and they were asked to pay the prevailing party, the Crawford's court fees etc. in excess of \$2000. We/ The Crawford's have not been paid yet. We are having to pay for our own response to the Gaston appeal. We are also helping to pay for the Gaston appeal providing a combined brief for Gaston paid with our City taxes.

The City's / Ian's reasoning is the Superior Court decision was wrong. If the City grants an illegal boundary line change=TYPE"A" action requiring only the director's decision, the public does not find out about any opposition that was received because there is no appeal process for such an action. In fact, any complaints are politely listened to giving the person a feeling that something will be done but with no appeal process, our staff isn't required to do anything about a known wrong.

It is clearly left up to the citizens to protect their own City by suing their City to make them follow their own laws.

**CRITICAL OVERLAY DISTRICT** If you do not fully understand the way the original CODE was written and how it works as a Critical Overlay District, how could you ever vote to remove it? Redundant, Repetitive, these words mean overlay but the definition of an OVERLAY is being used as the very reason to get rid of it??

Why did we pay for the consultants from Madronna Services in the 2000? I believe it was to get the CODE passed with the compromised minimum 75' buffers. The WA.ST.Dept. Trade & Economic Development was holding up our approval of the 2000 "New" Development Code because our buffers were too small to protect the streams. (\*SEE: letters given with prior comment.)

**Clearing & grading** of a site is a very substantial change to a piece of land. The City of Shoreline is asking for more GASTON'S by granting Tim Stewart more power, after his consistent failure to be able to enforce the code on the City level. Let alone understand the code. Tim Stewart's and Ian's Sievers decisions have cost The City of Shoreline, its taxpayers, Many developers, and appellants Millions of dollars!!! This is as straight and truthful as it gets.

The changes would move this permit to an "A" permit action making this a secretive process just like Gaston's boundary - line change was. Neighbors on each side of Gaston contacted the City and questioned the creation of a new lot, in a back yard of another house. If no appeal process exists staff is not required to consider what the public is saying at all=lawsuits have been the only way to be heard.

## **Gaston will never build on this illegal**

**lot**, how much money no matter Ian spends of the City of Shoreline's to get it built. WHY? There are many faults with the Gaston lot rendering it un-buildable. His reasoning for even appealing the ruling mentions nothing of this! Check his brief!!

**A contract was signed by the WA ST ATTORNEY GENERAL & four King County Commissioners over forty years ago.**

**Before the boundary line change the Gaston lot was a backyard that contained stormwater burms and pipes that allowed for the creek to be moved out of the way in 1963 (SEE: Contract w/ WA ST Highway Department, King County=City of Shoreline, Pryde homes=Gaston & Sunde+Crawford.)**

**The Largest Environmental, Most Significant Adverse Impact to ever hit Washington, I-5, separated our neighborhoods, Parkwood & Ridgcrest and many others. We live with I-5 as a neighbor and by doing that we have contributed to the infrastructure of this area and had to live with what comes along with our largest Interstate Highway next door. This contract was written to mitigate some of the damage that was done by placing this monster in our backyards.**

**The City of Shoreline has refused to recognize this Surface Water Contract written to mitigate damage from the construction of I-5.**

**City of Shoreline staff has stated their reasoning as to why the code needs changed: EXAMPLE: Gaston, could they sue the City of Shoreline for a “take” if we don’t let them build.**

**ANSWER= only if Ian is allowed to remove the protective CITE from the reasonable use permit.**

**This one piece of the code that is scheduled to be eliminated keeps the City of Shoreline and it’s citizens safe from takings!**

**This particular code reference was only one of the many problems that the King County Superior Court found with the City of Shoreline’s approval of the Gaston permit. It is only logical to leave the Reasonable Use Permit as it is.**

**Changing it is quite scary. Think about it! The City of Shoreline would be obligated to allow a developer a permit that he didn’t deserve after such developer created the mess or the need for an exemption from our laws. If we are afraid of land takings by the government, why on earth would you throw out such a Safety Net??**

**The City of Shoreline has collected many Millions of dollars in Surface Water Fees from its citizens. The City of Shoreline took over Surface Water Utilities for our City, no other utility, just Surface Water. Why? Because it is a moneymaker.**

**All water that runs off anywhere in Shoreline, roads, roofs, etc. is conveyed into pipes then into our natural creeks which move the water out into the sound. Our City uses our natural**

Creeks as a money making Utility. Why not protect what creates revenues for us instead of considering creeks to be non-economic ditches and development preventers. These are lies!

The City of Shoreline Has budgeted out a lot of money for rehabilitation and habitat restoration every year for these creeks. Yet, not a single dime has ever been spent! The City of Shoreline has used Thornton Creek and it's other creeks to convey stormwater through and disposing the run-off out of the city. The City of Shoreline then bills everyone in the City for contributing Surface Water Run-off. The Citizens have had to pay their fees yearly but it took the City took 5 years to begin cleaning catch basins, after collecting of the fees for years.

Please learn your code. Do not pass something just because "staff has put so much work into it". At this junction in time, such a serious effort coming from a staff that has lost over and over when challenged in court should be critiqued very carefully and with a healthy skepticism. Citizens of The City of Shoreline should be listened to. Many experts have ended up knowing a lot about a subject just to protect themselves and their families. Our comments should not be reduced because we are citizens. Citizen's comments should hold a greater and special value when it comes to dealings with their own City. We pay the taxes here. We live here. We care much more than money about our City.

**Utility Permit / CASUP:** I am happy to see that the staff desires to change it back to the form that it was originally in when we adopted the King County Sensitive Areas Code as our own. It is too bad that Aegis was allowed to use it. What is worse is that the City of Shoreline, staff, Planning Commission & Council let them. Step up and start to do the right thing. That means understanding your code first before you change it. The code is NOT confusing, NOT redundant, but very clear. Easy to work with and understand. The Overlay part of the code allows for the protections and development. Ask The Evergreen School.

Sincerely, Patty & Tim Crawford for Twin Ponds  
Fish Friends

-----Original Message-----

From: Andersen, David (OCD) [mailto:DavidA@CTED.WA.GOV]  
Sent: Thursday, May 29, 2003 10:14 AM  
To: Rachael Markle  
Subject: Critical Areas Procedural and Administrative Updates

Hi Rachel

This is a followup to our conversation yesterday afternoon regarding the SEPA determination. We received the proposed CAO amendments for 60-day review on February 7. We reviewed the materials and determined that there were no concerns. Let me know if you have any questions, best regards.

David Andersen, AICP  
Planning Review Team Manager  
Growth Management Services Office  
Washington State Department of  
Community, Trade and Economic Development  
906 Columbia St. SW  
Olympia, WA 98504-8350

(360) 725-3052



**ATTACHMENT F.      RESPONSES TO SEPA COMMENTS**



***Planning and Development Services***

17544 Midvale Avenue North  
Shoreline, WA 98133-4921  
(206) 546-1811 ♦ Fax (206) 546-8761

June 13, 2003

Mr. Eric Pentico  
Mr. Richard Costello  
State of Washington  
Department of Fish and Wildlife  
Region 4 Office: 16018 Mill Creek Boulevard  
Mill Creek, WA 98012

**RE: Response to WDFW June 6, 2003 Letter Regarding Critical Areas Code Revisions**

Dear Mr. Pentico and Mr. Costello:

Planning Development Services Department received a comment letter from Richard Costello from the State of Washington Department of Fish and Wildlife (WDFW) on June 6, 2003, in response to the SEPA determination issued by the City for the recommended critical areas code revisions. Mr. Costello makes five specific comments regarding the recommendations, which are addressed below.

In response to the SEPA determination, Mr. Costello makes no comment regarding the adequacy of the SEPA review process. While Mr. Costello may object to specific parts of the recommended changes, it appears that he does not object to the SEPA determination issued by the City's SEPA Official.

Planning and Development Services Department sent the proposed code revisions to the state review agencies on February 6, 2003, including WDFW. Despite contact to WDFW in February 2003, this is the first formal response the City has received from WDFW regarding these revisions. Mr. Costello states that he finds the proposal confusing. However, WDFW made no attempt to discuss the proposed revisions with City staff and did not respond to phone calls made to Mr. Eric Pentico in May and June 2003.

The following explains the City's understanding of Mr. Costello's concerns and responds to the issues he raises.

## **WDFW #1**

Mr. Costello expresses concern regarding the protection of buffers under the proposed changes to the critical areas reasonable use permit. The following is the proposed change to criterion 2, which removes “and the buffer.”

2. ~~There is No other reasonable use of the property with less impact on the critical area and the buffer is feasible or possible; and~~

As the WDFW letter states, other sections of the code do refer to protection of critical areas and their buffers. Buffers are an important tool used to protect some types of critical areas, and their protective function should be maintained. However, the focus of the permit criteria needs to be on protecting the critical area.

This criterion is specific to the reasonable use permit, and it needs to be understood that the purpose of the reasonable use permit is to address those limited and precise circumstances where constitutional property rights would be otherwise unlawfully restricted through implementation of the critical areas standards, not to provide for general development. In other words, the critical areas reasonable use permit only applies in situations where application of the code would be found unconstitutional.

Also, the requirement of the GMA, is to “protect critical areas.”<sup>1</sup> While the State growth management guidelines encourage the use of buffers to separate incompatible land uses,<sup>2</sup> buffers do not directly require protection. The purpose of the buffer is to provide a protective function for the resource or public safety and that function needs to be maintained. In some instances, alternative protection measures may protect the critical area better than maintaining the full buffer. For example, standards might require a steep slope buffer. However, if the public can be better protected using a retaining wall it may be appropriate to reduce the buffer.

If the term “and the buffer” was included in the criterion, it would imply that the buffer has equal weight with the actual critical area and that both the critical area and the buffer deserve equal protection. Doing so, especially when the buffer may be ineffective, could be detrimental to the critical area and the public.

## **WDFW #2**

Based on public comments, the City of Shoreline will not eliminate the subject criterion mentioned by Mr. Costello.

## **WDFW #3**

Mr. Costello expresses concern over how conflict between regulations is resolved. The recommended code revisions would remove SMC 20.80.050 to remove the potential for conflict. However, conflict between code sections is governed by SMC 20.30.020, which states:

Where conflicts occur between provisions of this Code and/or between the Code and other City regulations, the more restrictive provisions shall apply.

---

<sup>1</sup> RCW 36.70A.060(2)

<sup>2</sup> WAC 365-190-080

Resolution of conflicts between code sections needs to be established in the general portion of the development regulations because the general section provides the direction for how the subchapter should be implemented. The preemption for critical area regulations that are more restrictive than other development regulations is adequately addressed in the above mentioned section and the Chapter 80 preemption section was redundant.

#### **WDFW #4**

Mr. Costello states that elimination of SMC 20.80.190 would move buffer reductions from variances to reasonable use permits. It is difficult to fully understand the WDFW objection, in part, because the existing SMC 20.80.190 is difficult to understand. SMC 20.80.190 discusses reasons for allowing buffer reductions but it is unconnected to any specific permit or review process. No directions are provided to staff or applicants for how one would apply for such a buffer reduction and if one could, it would be duplicative of the reasonable use permit, variance, and performance standards in the code. The concern of staff is that an applicant could use SMC 20.80.190 as a means to force an end-run around the performance standards. By eliminating this section, we remove an unclear process and limit opportunities reducing critical areas buffers.

#### **WDFW #5**

Mr. Costello objects to the removal of “which may impact critical areas” from a paragraph in SMC 20.30.040. This portion of code describes those Type A permits listed in Table 20.30.040 that require SEPA noticing.

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

He appears to be worried that this revision would cause projects to no longer be noticed under SEPA. In fact, the revision would clarify that the requirement applies broadly. As currently worded, it appears to require SEPA noticing for only those projects that may impact critical areas and require a SEPA threshold determination, which would exclude many SEPA reviews. The intent is to require SEPA noticing for all Type A permits that require SEPA review, not just those involving critical areas.

Table 20.30.050, item 4, specifies the notice requirements for SEPA review:

4. SEPA Threshold Determination	Mail, Post Site, Newspaper	60 days	HE	20.30.490 – 20.30.710
---------------------------------	----------------------------	---------	----	--------------------------

Changes are also proposed that would increase the applicability of SEPA. Currently, specific types of minor new construction are exempt from SEPA, except when the proposal would alter conditions within an environmentally sensitive area. In other words, by not being exempt, SEPA is required for projects within sensitive areas.

Under the recommended revisions, SEPA review would be required for all projects that would alter conditions within a critical area or its buffer, and SEPA noticing would be required of all Type A projects that require SEPA review. Below is an excerpt of the recommended change to SMC 20.30.560:

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

I hope this addresses your concerns.

Cordially,



Anna Koloušek

Assistant Director, Planning and Development Services

cc: Barbara Ritchie, Department of Ecology  
Ike Nwankwo, Washington State Office of Community Development  
Millard Deusen, State of Washington Department of Fish and Wildlife



*Planning and Development Services*

17544 Midvale Avenue North

Shoreline, WA 98133-4921

(206) 546-1811 ♦ Fax (206) 546-8761

June 13, 2003

Mr. Paul A. Kampmeier  
Smith & Lowney, P.L.L.C.  
Attorney for Thornton Creek Legal Defense Fund  
2317 East John Street  
Seattle, WA 98112

**RE: Response to June 6, 2003 Letter Regarding Critical Areas Code Revisions**

Dear Mr. Kampmeier:

Thank you for the constructive comments you and your clients presented to us at the meeting on June 5 and in your letter of June 6, 2003.

Regarding your comments on SEPA checklist:

The SEPA checklist prepared for this project acknowledges that Chinook are present in Boeing, Lyon, and McAleer Creeks, and in Puget Sound, and it references the Stream Inventory that more fully describes the known presence of salmonids. Your letter states that the checklist is inadequate, because it doesn't state that Chinook are present in Thornton Creek. However, you do not provide any reference to any additional science that would support facts other than those in the Stream Inventory listed in the checklist. As you are aware, the codes apply throughout the City and the checklist acknowledges Chinook in some waters, therefore impacts to endangered salmon are already acknowledged by the checklist.

Regarding your specific comments on Exhibit A (proposed amendments):

- 1) Protection of buffers under the proposed changes to the critical areas reasonable use permit.  
As your letter states, some sections of the code do refer to protection of critical areas and their buffers. Buffers are an important tool used to protect some types of critical areas and their protective function should be maintained. However, as we discussed at the meeting on June 5, the focus of the permit criteria needs to be on protecting the critical area. It needs to be understood that the purpose of the reasonable use permit is to address those limited and precise circumstances where constitutional property rights would be otherwise unlawfully restricted through implementation of the critical areas standards, not to provide for general development. In other words, the critical areas reasonable use permit only applies in situations where application of the code would be found unconstitutional. Regarding the use of "critical area" and "critical area buffer" please refer to my response letter to the Department of Fish and Wildlife.

- 2) Regarding your comment about the consistency of “qualified professional” term use in the code, the staff agrees and the changes are addressed in Exhibit A to the proposed ordinance.
- 3) Regarding the criterion B.5 (20.30.336), please see change in Exhibit A.
- 4) Regarding your comments on section 20.30.080, we have included the “critical areas checklist” specifically as a requirement.
- 5) Regarding your comments on proposed removal of sections 20.80.050 and 20.80.110, these sections will stay until review and revisions of the second phase of the critical areas standards.

We hope to work with you and your clients during the preparation of the protective standards for the critical areas. The public input and recommendations for improving proposed procedures and the protective standards are a vital part of the process of redrafting them.

Cordially,

A handwritten signature in black ink, reading "Anna Kolousek". The signature is fluid and cursive, with the first name "Anna" and last name "Kolousek" clearly distinguishable.

Anna Kolousek  
Assistant Director, Planning and Development Services

Attachments

**ATTACHMENT G.      TABLE OF ITEMS CHANGED IN EXHIBIT A  
FROM THE PLANNING COMMISSION'S  
RECOMMENDED DRAFT**



# **TABLE OF ITEMS CHANGED IN EXHIBIT A FROM THE PLANNING COMMISSION'S RECOMMENDED DRAFT**

Development Code Section	Page # Pl. Comm. Draft	Page # Exhibit A	Description of Change
20.20 Definitions	4	3	Building Footprint - definition removed.
	4	3	Reasonable Use – new definition.
	4	3	Qualified Professional – definition revised.
	4	3	Utility – definition clarifies the limited availability of CASUP (word “only” inserted).
20.30.080 Preapplication meeting	10	8	Addition of words “which shall include a critical areas checklist”.
20.30.333 Critical areas special use permit	13	9	Subsection A. Purpose, words “public agency or utility” substituted for word “applicant”.
20.30.336 Critical areas reasonable use permit	15	11	Subsection B. Decision Criteria, criterion 5, first sentence left in with addition.
20.30.336 Critical areas reasonable use permit	16	11-	Subsection D. Priority, words “critical area buffers” added to the first sentence. Sentence and priorities revised to make the order of priorities clear.
20.80.050 Applicability	23 and 24	16	This section was originally recommended for removal; it would stay in until critical areas protective standards are revised (renumbered to 20.80.025).
20.80.110 Relationship to other regulations	31	21	This section was originally recommended for removal; it would stay in until critical areas protective standards are revised (renumbered to 20.80.045).

NOTE: Attached are the pages from the Planning Commission recommended draft that have changes proposed in Exhibit A.  
Typographical and clerical changes in Exhibit A are not listed in this table.

## Chapter 20.20

### Definitions

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

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

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

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

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

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

#### **20.30.080 Preapplication meeting.**

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

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

Preapplication meetings are required prior to the neighborhood meeting.

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

#### **20.30.110 Determination of completeness.**

A. An application shall be determined complete when:

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

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

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

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

See new definition of “qualified professional” on page 4.

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

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

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

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

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

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

- ~~1. That tThe application of the critical areas development standards, Chapter 20.80 SMC, would unreasonably restrict the ability of the public agency or utility to provide services to the public; and proposed special use is in the public benefit;~~
- ~~2. There are is no other practical alternatives to the proposed development which proposal by the public agency or utility that would cause less impact on the critical area; and~~

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

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

See revised definition of "utility" on page 4.

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

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

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

1. The application of the development standards would deny all reasonable use of the property; and
2. There is Nno other reasonable use of the property with less impact on the critical area and the buffer is feasible or possible; and
2. ~~There are no feasible and reasonable on-site alternatives to the activities proposed, such as possible changes in site layout, reductions in density and similar factors; and~~
3. Any alterations to the critical area would be the minimum necessary to allow for reasonable use of the property~~The proposed activities, as conditioned, will minimize to the greatest extent possible potential impacts to the affected critical areas; and~~
4. The proposed development does not create a health or safety hazard on or off the development site, will not be materially detrimental to the property or improvements in the vicinity, is consistent with the general purposes of this Title and the public interest, and Aall reasonable mitigation measures have been implemented or assured; and
5. ~~The inability to derive reasonable economic use is not the result of the applicant's actions. The purchase price of the property or other investment derived expectations shall not be construed to be an applicant's action.~~
6. ~~The applicant must demonstrate that the use would not cause a hazard to life, health, or property. (Ord. 238 Ch. VIII 1(L), 2000).~~

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

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

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

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

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

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

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

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

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

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

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

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

- B. The actual presence or absence, type, extent, boundaries, and classification of critical areas shall be identified in the field by a qualified consultant, and determined by the City, according to the procedures, definitions and criteria established by this chapter. In the event of any conflict between the critical area location or designation shown on the City's maps and the criteria or standards of this chapter, the criteria and standards shall prevail.
- C. The critical areas maps shall be periodically updated by the City and shall reflect any permit activity, results of special studies and reports reviewed and approved by the City, amendments to the Comprehensive Plan Environmental Element and Department identified errors and corrections. (Ord. 238 Ch. VIII 1(D), 2000).

**20.80.050 Applicability.**

- ~~A. Unless explicitly exempted, the provisions of this chapter shall apply to all land uses and within all zoning designation in the City of Shoreline. All persons within the City shall comply with the requirements of this chapter.~~
- ~~B. The City shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water or vegetation or to construct or alter any structure or improvement without first assuring compliance with the requirements of this chapter.~~
- ~~C. Approval of a development proposal pursuant to the provisions of this chapter does not discharge the obligation of the applicant to comply with the provisions of this chapter.~~
- ~~D. When any provisions of any other section of the City Code conflicts with this chapter or when the provisions of this chapter are in conflict, that provision which provides more protection to critical areas shall apply unless specifically provided otherwise in this chapter or unless such~~

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

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

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

**20.80.060 Regulated activities.**

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

- ~~1. Removing, excavating, disturbing or dredging soil, sand, gravel, minerals, organic matter or materials of any kind;~~
- ~~2. Dumping, discharging or filling with any material;~~
- ~~3. Draining, flooding or disturbing the water level or water table;~~
- ~~4. Driving pilings or placing obstructions;~~
- ~~5. Constructing, reconstructing, demolishing or altering the size of any structure or infrastructure or the addition of any impervious surface coverage to a site located within a critical area or its buffer, unless otherwise exempted;~~
- ~~6. Destroying or altering vegetation through clearing, grading, harvesting, shading or planting vegetation that would alter the character of a critical area, including tree cutting, brush clearing, pruning, and other methods of vegetation alteration;~~
- ~~7. Activities that result in significant changes in water temperature, and/or the physical or chemical characteristics of water sources, including water quantity and water quality; and~~
- ~~8. Any other activity that has a potential to impact a critical area or established buffer not otherwise exempt from the provisions of this chapter.~~

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

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



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

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

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

**20.80.110 Relationship to other regulations.**

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

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

**20.80.120 Reasonable use provision.**

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

SMC 20.80.110 is removed to be consistent with SMC 20.30.020.

SMC 20.80.120 is revised and relocated to SMC 20.30.336.

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