

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Public Hearing, Proposed Critical Areas Ordinance No. 398 Updating Critical Areas Regulations, Phase II
DEPARTMENT:	Planning and Development Services
PRESENTED BY:	Joseph W. Tovar, FAICP, Director Matthew Torpey, Planner II

PROBLEM/ISSUE STATEMENT:

On January 17, 2006 the Council agreed to re-open the public hearing regarding the proposed critical areas ordinance to solicit additional public comment. As required by RCW 36.70A.035 and to provide as open a public process as possible, Council will hear testimony from the public regarding amendments proposed by both Council members' as well as staff.

It is anticipated that at the close of public comment, council will deliberate on the testimony as well as the proposed amendments. The Council may complete its deliberation on this matter and take action at the February 13 meeting. If more time is required for Council deliberation and decision-making, we will bring Ordinance 398 back for action at the meeting on February 27, 2006.

Attached to this staff report are the proposed amendments from Councilmember's Fimia and Way, as well as two amendments originally proposed by staff at the October 24, 2005 public hearing (one proposed amendment has been removed from the staff proposal due to Ord. 407, hazard tree moratorium). Ordinance 398 is attached for reference as well as all correspondence received by the Planning Department since October 21, 2005.

FINANCIAL IMPACT:

The Washington State Department of Community, Trade and Economic Development awarded the City of Shoreline a grant of \$42,000 to update the Development Code, environmental procedures, and regulations. City of Shoreline staff and consultants have provided the attached draft critical area code update while keeping expenditures within granted amount.

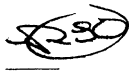
RECOMMENDATION

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

ATTACHMENTS

Attachment A: Councilmember Fimia's Proposed Amendment
Attachment B: Councilmember Way's Proposed Amendments
Attachment C: Staff Proposed Amendments
Attachment D: Ordinance 398
Attachment E: Correspondence Received since October 21, 2005.
Attachment F: Notice of Scoped Public Hearing

Approved By: City Manager



City Attorney



- **20.80.085 Pesticides, Herbicides and Fertilizers on City Owned Property
(New Section)**

Pesticides, herbicides and fertilizers which have been identified by state or federal agencies as harmful to humans, wildlife, fish, shall not be used in a city-owned riparian corridor, shoreline habitat or its buffer, wetland or its buffer, except as allowed by the Director for the following circumstances:

1. When the Director determines that an emergency situation exists where there is a serious threat to public safety, health, or the environment and that an otherwise prohibited application must be used as a last resort.
2. Compost may be used for native plant revegetation projects in any location.

Councilmember Janet Way's Proposed Critical Area Ordinance
Amendments for Consideration at the February 13, 2006 City Council

- **20.80.030(L) –Partial Exemptions**

L. When it can be demonstrated that there will be no adverse affect, the following activities may be allowed within critical areas and their buffers: educational activities, scientific research, and outdoor recreational activities, including but not limited to interpretive field trips, bird watching, public beach access including water recreation related activities, and the use of existing trails for horseback riding, bicycling and hiking, that will not have an adverse effect on the critical area;

- **20.80.030(P) – Partial Exemptions**

P. Mitigation projects related to utilites construction in critical areas or their buffers.

- **20.80.050 Notice to Title**

Do not adopt Planning Commissions Recommendations for SMC
20.80.050(A)

- **20.80.080(F)- Alterations or development of critical areas- standards and criteria.**

F. Monitoring, measuring and reporting the impact to the Planning Director and taking the appropriate corrective measures.

- **20.80.470- Streams**

A. "Type I streams" are those streams identified as "Shorelines of the State" under the City Shoreline Master Program.

B. "Type II streams" are those natural streams that are not Type I streams ~~and are either perennial or intermittent and have salmonid fish use~~ and have one of the following characteristics: and have one of the following characteristics:

1. Salmonid fish use;
2. Demonstrated salmonid habitat value as determined by a qualified professional
3. Significant recreational value.

C. "Type III Streams" are those streams with perennial (year round) or intermittent flow with channel width of two feet or more taken at the ordinary high water mark ~~and are not used by salmonid fish and have no potential to be used by salmonid fish.~~

D. "Type IV streams" are those streams and natural drainage swales with perennial or intermittent flow with channel width less than two feet taken at the ordinary high water mark that are not used by salmonid fish.

- **20.80.480(H) – Restoring Piped Watercourses**

- 1. The city encourages the opening of previously channelized/culverted streams and the rehabilitation and restoration of streams both on public property or when a property owner is a proponent in conjunction with a new development.

2. When piped watercourse sections are restored, a protective buffer shall be required of the stream section. The buffer distance shall be based on an approved restoration plan, regardless of stream classification, and shall be a minimum of 10 to 25 feet at the discretion of the director to allow for restoration and maintenance. The stream and buffer area shall include habitat improvements and measures to prevent erosion, landslide and water quality impacts. Opened channels shall be designed to support fish access, unless determine to be unfeasible by the City.



Memorandum

DATE: January 31, 2006

TO: City of Shoreline Councilmembers

FROM: Matt Torpey, Planner II

RE: Staff recommended amendments to the Draft Critical Areas Ordinance

The current draft version of the CAO contains a clerical error that should be corrected as well as one code section that requires removal as a result of a recently adopted State law. Planning and Development Staff recommends that the Council amend the code to include the following changes.

1. Remove the word "open" from SMC 20.80.460(A). This will make it consistent with the draft version of the definition of "Stream" in SMC 20.20.046(S).
2. Staff has been notified by Community Trade and Economic Development that inclusion of language that dictates where mobile homes may and may not be placed within the City of Shoreline is no longer legal per Senate Bill 6593 adopted in the 2004 legislative session. Staff recommends removal of SMC 20.80.380(H).

ORDINANCE NO. 398

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PASSED BY THE CITY COUNCIL ON FEBRUARY 13, 2006

Mayor Robert Ransom

ATTEST:

APPROVED AS TO FORM:

Scott Passey
City Clerk

Ian Sievers
City Attorney

Date of Publication: February 16, 2006
Effective Date: February 21, 2006



State of Washington
DEPARTMENT OF FISH AND WILDLIFE
Mailing Address: 16018 Mill Creek Boulevard Mill Creek, WA 98012
(425) 775-1311 Fax (425) 379-2323

Date: October 21, 2005

Matthew Torpey
Planning and Development Services
City of Shoreline
17544 Midvale Avenue North
Shoreline, Washington 98133-4921

SUBJECT: WDFW Review of Draft Proposed Update to the City of Shoreline Critical Area Ordinance

Dear Mr. Torpey:

Thank you for the opportunity to review and comment on the City of Shoreline Critical Area Ordinance (CAO). We appreciate the time and effort that you and your project team have spent researching and writing the draft ordinance. We offer the following comments and suggestions in an effort to help you draft a Critical Area Ordinance that sufficiently protects our valuable fish and wildlife resources in Washington State.

The WDFW commends the City of Shoreline for improving fish and wildlife in the following sections of the document:

Page 10, Section 20.80.030.H Exemptions: A new exemption to encourage conservation and enhancement opportunities will benefit fish and wildlife by providing a more streamlined permitting process.

Page 14, Section 20.80.050.B, Notice to title: Clearly depicting the critical area habitat on plats or site plans will be beneficial to both the developer and fish and wildlife resources by clearly delineating protected areas.

Page 15, Section 20.80.060A, Permanent field marking: Clearly depicting critical areas using signage will help avoid unlawful clearing of brush, and other intrusions into fish and wildlife habitat areas.

Page 60, Subchapter 7. Stream Areas, 20.80.460.A., Designation and purpose: The City of Shoreline has come up with an excellent definition for streams that will properly protect fish and wildlife along streams and shorelines within city jurisdiction.

The following sections of the CAO, as written, may not sufficiently protect fish and wildlife. WDFW offers the following comments and recommendations for the proper protection of valuable fish and wildlife resources:

Page 10, Section 20.80.030.G. Exemptions: work activities in areas with steep slopes could cause harmful effects to riparian areas near streams and marine shorelines. An example of this would be if development was allowed along a bankline, and a short time later, erosion was observed. A homeowner may be inclined to apply for bank protection, such as a bulkhead, in this case. Bulkheads prevent or slows down the deposition of sediment onto beaches. Over time, sand or gravel, which provide critical habitat for marine fish species, erode away thereby removing habitat where forage fish and juvenile salmonid prey items live. Because Richmond Beach, which is in the jurisdiction of the City of Shoreline, is a documented surf smelt spawning beach, it will be very important that steep slopes near streams or marine shorelines not be developed unless there is a sufficient buffer based on Best Available Science (BAS), refer: WDFW Management Recommendations for Washington's Priority Habitats, *Riparian* (Knutson et al, 1997).

Page 11, Section 20.08.030.P. Exemptions: Language in this section would allow six significant trees to be removed from a critical area or critical area buffer provided sufficient mitigation is offered to offset the impact. Removing vegetation along buffers negates the purpose of the buffer, namely, to have vegetation for filtering pollutants, sediment, and provide shading in small streams. Significant trees may also contain important wildlife species (e.g., eagle nest/perch trees, trees with cavities) and should be protected to the greatest extent possible. WDFW has several questions and comments regarding statements in this section. What is the intent of having this language in the document? Is it to allow homeowners view property? If this is the case, there are other alternatives that are less destructive for fish and wildlife habitat. One alternative is to allow "limbing" the tree. Up to 1/3 of the canopy could be removed without significantly harming wildlife species and at the same time allow adequate views. In order to properly protect fish and wildlife, WDFW recommends language be inserted that states tree removal would be prohibited in geological hazardous areas unless it is a threat to life or property. In addition, the need for tree removal should be justified (based upon a report by a qualified professional arborist). WDFW also has concerns about cumulative impacts that may result from this language. If each property owner is allowed to remove up to six significant trees, this could have much larger ramifications than anticipated on fish and wildlife habitat, particularly if two or more separate development tracts are adjacent to one another.

Pages 11 & 12, Section 20.80.040.1 and 2, Partial exemptions: This language would adequately address the needs of fish and wildlife provided that there is a requirement to examine alternatives using Low Impact Development on the site.

Page 20, Subchapter 2, Geologic Hazard Areas, Section 20.80.210.D: Language in this section allows buffers to be reduced to 15 feet when technical studies demonstrate that

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

Page 27, Subchapter 3. Fish and Wildlife Habitat Conservation Areas (FWHCA): There is no mention of marine shorelines in this section, except to state that they are classified as FWHCA. There is considerable potential to improve marine shorelines within the City of Shoreline because of the high number of bulkheads, ramps and other shoreline modifications structures. Improvements can be made as these structures are repaired or replaced. In addition, Richmond Beach contains documented surf smelt spawning habitat, an important prey item for adult salmonids. Specific recommendations for allowable construction practices for boats, ramps, and piers should be included here. For example, prohibit treated wood, examine the feasibility of using soft-bank protection instead of hardened structures such as bulkheads, and discuss the impacts of cumulative effects that these structures have along Puget Sound shorelines. The WDFW would be happy to assist you with the details of how to implement Best Management Practices along marine shorelines.

Page 29, Section 20.80.280.A, Required buffer areas: there is an error in the language used here. Should be Washington State Department of *Fish* and Wildlife.

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

Page 35, Section 20.80.330.A, Wetlands, Required buffer areas Language should be revised in this section. The 1987 DOE Wetlands Manual is referred to for delineating wetland buffers. A new DOE manual has been adopted and contains the most up-to-date BAS on wetland science. Wetland buffers should be based on the new updated Volume 1 Synthesis of the Science, Publication #05-06-006, Wetlands in Washington State, Volume 2, Publication #05-06-008 and the Washington State Wetland Rating System for Western Washington, Publication #04-06-025.

Page 35, Section 20.80.330.B, Wetlands, Required buffer areas: The wetland buffers proposed by the City of Shoreline are considerably less than those recommended in the latest DOE wetlands manual referenced above. This document is based on a synthesis of scientific literature, and it represents DOE's view of best available science. The City of

Shoreline has not provided any scientific analysis or support that demonstrates that the proposed buffers will adequately protect the functions and values of wetlands. The wetland buffers proposed by the City of Shoreline will likely result in significant adverse impact of fish and wildlife species, including species that may be listed as endangered, threatened, or sensitive, and fish species that are anadromous.

Page 61, Subchapter 7. Stream Areas, 20.80.470, Classification: although the stream typing system chosen by the city may be adequate, it is not consistent with the new water-typing system used by state agencies and many local jurisdictions. This may cause some confusion for the public or planners, and WDFW recommends that the city adopt the new stream classification system.

Page 62, Stream Areas, 20.80.470.F1., Classification: this subsection proposes to clarify the term salmonid fish use by defining it as where fish have been documented, as well as where they are presumed to be, based on passability and planned restoration. Planned restoration projects are too narrowly defined and this may prevent future restoration efforts in some cases. The definition of salmon passability would only apply to restoration efforts outlined in a 6-year capital improvements plan, or, a planned removal of a dam. Instead of narrowly defining presumed salmonid use under these two circumstances, WDFW recommends that subsection F1 be reworded to say "*Streams where naturally recurring and **historical** use by salmonid populations has been documented... .*" Subsection F2 should be reworded to read "*Streams that are fish **passable or have the potential to be fish passable**... .*" In many cases, there are barriers preventing salmonids from entering waters further upstream that are easily correctable. Voluntary restoration efforts, both small and large, are undertaken by citizens and local governments and are continuing to increase throughout Puget Sound. Collectively they represent a very significant contribution to the recovery of Puget Sound chinook salmon.

Page 62, Stream Areas, 20.80.470, Classification (last underlined paragraph at bottom of page): this sentence should be deleted from the text, as it could be used by developers to encourage development in degraded areas that have fish use, or, have potential for fish use. More important, it ignores the fact that streams and small creeks are interconnected with one another and are influenced by stressors occurring upstream or downstream at a particular site. If development is allowed to occur in currently degraded areas causing more degradation and increased stressors to a stream, effects of that activity could be observed upstream or downstream of the project site affecting clean, more pristine areas.

Page 64, Table 20.80.480B. Required buffer areas: The riparian buffers proposed by the City of Shoreline are considerably less than those recommended by WDFW in its publication titled "Management Recommendations for Washington's Priority Habitats: Riparian." This document is based on a synthesis of scientific literature, and it represents WDFW's view of "best available science" regarding an important component in the protection of riparian areas across Washington State. The City of Shoreline has not provided any scientific analysis or support that demonstrates the proposed buffers will adequately protect the functions and values of riparian areas. The riparian buffers

proposed by the City of Shoreline will likely result in significant adverse impact of fish and wildlife species, including species that may be listed as endangered, threatened, or sensitive, and fish species that are anadromous. WDFW would welcome the opportunity to provide technical assistance to the City of Shoreline as it continues to develop an ordinance that adequately protects fish and wildlife resources.

Page 65, Section 20.80.480D2: This section would allow construction of roads, utilities, and accessory structures within stream buffers when no feasible alternative location exists. "No feasible alternative" leaves much up to interpretation and does not require any systemic evaluation that would ensure all alternative were adequately examined. WDFW recommends that this paragraph add a sentence that states "Prior to approval of building new roads, utilities, or accessory structures in buffers along streams, an alternatives analysis must be conducted to ensure all possible alternatives have been examined and that no viable alternative exists. This evaluation must be documented in a written report and provided to respective governmental agencies with jurisdictional authority to ensure all alternatives have been examined. If it is determined that no alternative sites are feasible to build at, the impacts must be fully mitigated."

Page 67, Section 20.80.480F: This section discusses buffer averaging. In order to ensure fish and wildlife is being protected to the greatest extent possible, a paragraph should be added here that states that a habitat survey will be conducted within the area of concern in order to identify and prioritize highly functional fish and wildlife critical habitat within the study area. Buffers at locations containing highly functioning fish and wildlife habitat should be protected and buffers should not be reduced in those areas. On the other hand, areas containing habitat of minimum value should be where reductions occur.

Page 68, Section 20.80.480.H2. Restoring Watercourses: wording in this paragraph will likely result in significant impacts to fish and wildlife resources. As written, at locations where piped watercourses are daylighted and habitat is restored, buffers could be reduced to 10 feet. The rationale given is that the standard buffers would discourage restoration efforts. Unfortunately, the time and money spent in daylighting the stream would be negated by having a severely deficient buffer. In fact, doing so could result in *greater* impacts to the stream than by not daylighting at all since those stream sections could be exposed to a higher level of pollutants, temperatures and sedimentation than it would going through a pipe. It is important that the City acknowledge and provide incentives for restoration efforts but it must be done in a manner that will be beneficial to fish and wildlife resources. It is very important that buffers in areas where streams are daylighted be the same or greater as buffers in other FWHCA.

Page 69, Section 80.80.490.B1. Alteration: This section states that culverts are allowed for Type II, III, and IV streams. This may very likely lead to significant impacts to fish species. Since all streams within the City's jurisdiction are Type II-IV, this would allow culverts to be built for all streams within the City of Shoreline. WDFW suggests that wording be such that culverts would only be allowed after all avoidance alternatives have been examined. This would need to be in report form and would have to list reasons why

Matthew Torpey
October 21, 2005
Page 6 of 7

buildings, structures, or roads could not be placed outside of the critical areas. In addition, the developer should have to demonstrate that having a culvert would better protect fish and wildlife resources than having an open channel.

Page 72, Section 20.80.500.D. Mitigation performance standards and requirements: This section needs to be reworded in order to properly protect water quality in streams and along shorelines. The last sentence in the paragraph states that performance standards outlined in this section only apply to Type I-III streams within the City. Type IV water bodies also need to be included here because pollutants or other stressors to Type IV streams with less protection can impact Type I-III streams if they happen to be interconnected with one another, which they usually are. What happens upstream or downstream of a site can impact fish and wildlife along the entire gradient.

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

The Washington Department of Fish and Wildlife wishes to thank you again for the opportunity to provide comments on your critical area ordinance. We sincerely hope that you will find these comments constructive in your final deliberations. Please don't hesitate to contact me at the number listed below with any questions that you have regarding the comments and recommendations contained in this letter. I would be more than happy to sit down with you and discuss some of the above-mentioned issues in greater detail.

Sincerely,



Pamela Erstad, PHS/GMA Biologist
Washington Department of Fish and Wildlife
16018 Mill Creek Blvd
Mill Creek, Washington 98012

Phone: 425.379.2308
Fax: 425.379.2323

Cc: David Brock, WDFW Region 4 Office

CAO PUBLIC COMMENT CC 005

Matthew Torpey
October 21, 2005
Page 7 of 7

Bob Everitt, WDFW Region 4 Office
Millard Deusen, WDFW Headquarters
Steve Penland, WDFW Headquarters
Laura Casey, NWDOE
Ike Nwankwo, CTED

CAO PUBLIC COMMENT CC 005



THORNTON CREEK ALLIANCE

P.O. Box 25690, Seattle, WA 98125

Restoring an Ecological Balance

October 24, 2005

City Council
City of Shoreline
17544 Midvale Avenue North
Shoreline, WA 98133-4921

RE: Support for CAO Recommended by Planning Commission

Dear Mayor Hansen and Shoreline Councilmembers:

Thornton Creek Alliance (TCA) would like to take this opportunity to thank the members of the Shoreline Planning Commission for their thoughtful consideration of the City's proposed critical areas ordinance, and to urge the City Council to adopt the Commission's recommendations.

TCA testified twice to the Commission, and followed its work closely. Not every one of our requests was fully addressed. We remain concerned that the proposed ordinance does not follow the Washington Department of Ecology's recommended rating system for wetlands. This system represents best available science and addresses the Growth Management Act's emphasis on protecting the "functions and values" of critical areas. We also remain concerned that the lack of any buffer along the City's marine shoreline does not adequately protect its functions and values. But we accept the Planning Commission's commitment to revisit wetland ratings early next year, and we recognize that at least designating the marine shoreline as a critical area is a step forward.

We support the Commission's recommendation to delete staff-proposed provisions to allow clearing in critical areas with a Critical Areas Stewardship Plan. It was simply false to suggest that such a plan COULD result in "no net loss" of functions and values, given the crucial role that mature vegetation plays in all critical areas. We are concerned by the Council's proposal to revisit this issue through mediation with the Innis Arden community. We recognize that the Council wishes to avoid a divisive fight within that community, but we want to be clear that the entire City—and others who share its ecosystems—have a stake in the result.

CAO PUBLIC COMMENT CC 006

Shoreline City Council
October 24, 2005
Page Two

We support the Commission's proposed new buffer provision (in SMC 20.80.480.B.) to protect daylighting opportunities for piped streams. We also support the proposed definition of "salmonid fish use", which would lead to stream reaches in the vicinity of Twin Ponds Park (TC-3, TC-4 and TC-7, as shown on the City's maps) being designated as "Type II", because of their use by wild cutthroat trout. We also believe that, with future restoration, this definition will allow stream reaches TC-2 and TC-8 to qualify as "Type II" as well.

Thank you for this opportunity to comment. We believe the City Council and the citizens of Shoreline should be proud of the thoughtful work of your Planning Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "John Lombard", with a stylized flourish at the end.

John Lombard
Thornton Creek Alliance

cc: Shoreline Planning Commission

12 November 2005

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

Dear Councilors,

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

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

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

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

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

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

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

Sincerely,

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

Sonja J. Staley

CAO PUBLIC COMMENT CC 007

MICHELE MCFADDEN LAW OFFICE

October 24, 2005

Shoreline City Council
17544 Midvale Avenue North
Shoreline, WA 98133-4921

RE: Planning Commission Recommended Critical Areas Update Ordinance – dated
October 6, 2005

Dear Councilmembers:

This letter is offered as a follow-up to the comments I provided in March of this year to the planning Commission on behalf of Patty and Tim Crawford.

As most of you are aware, the City and the Crawfords have had numerous disagreements about the existing code, including what its terms mean, and how City staff and the examiner have chosen to interpret it and apply it. At the core of these disputes is Thornton Creek, its status under the code, and whether the City's treatment of the Creek is consistent with regional efforts to restore fish-bearing streams such as Thornton Creek to more productive conditions.

To date, the city's actions with regard to Thornton Creek have varied considerably – at times appearing to be supportive of efforts to improve the Creek, at other times acting as if the Creek is an insignificant, non-fish bearing stream in a ditch. So it is with some skepticism that we have reviewed this proposal. We will therefore highlight the changes that we believe reflect the pervasiveness of the City's efforts to sound like it is taking care of the Creek, but acting adversely to its interests. In all the sections we are addressing, we believe that the Creek will have less protection than it has now.

Stream Definition (p.25 of Council packet)

In our previous comments to the Planning Commission, we objected to the notion that streams that are in pipes are not considered streams. This is facially incorrect. The existing definition of stream does include watercourses in pipes that are "used by salmonids or are used to convey streams naturally occurring prior to construction in such watercourses. Since then, the Court of Appeals has agreed with the Crawfords, and in the Gaston case, determined that Thornton Creek is still a creek even when it goes through a pipe under the Gaston property. That said, we have no problem with the amendment to

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CAO PUBLIC COMMENT CC 008

the definition of stream as proposed by the Planning Commission, except to note that it is incorrectly drafted in the version before the council – some of the existing language that is being struck is not shown at all.

“Qualified consultant/professional”

There are numerous times in the code when an action is taken or decision made solely on the basis of some “qualified” consultant or professional. Frankly, since these are almost always “hired guns” for a property developer, you direction to staff to rely on this work, it is our experience that **without any direction to consider and balance it against state resource agencies such as Washington Department of Fish and Wildlife**” this language is simply a setup to encourage and allow further resource degradation. We point out below some specific locations where this occurs.

SMC 20.80.270 (p. 77 et seq)

We appreciate the efforts of the Planning Commission to overhaul this section. However, the rewrite still invites arguments about what is “significant” habitat, and whether fish must be “present” as an indication of habitat being significant. Paragraph B helps to clarify this point, but the language is unclear given the language in the proposed rewrite of 20.80.470 whether piped streams are regulated or not, and is also unclear whether the buffer requirements for habitat areas will apply the stream and wetland buffer requirements as a minimum or be subject to change because of the provisions of SMC 20.80.280. (p. 79)

This section should be revised to clarify that for fish habitat areas, the buffers would not be less than those required for streams and wetlands in other code sections

SMC 20.80.310 (p. 82)

First full paragraph: artificial wetlands created for mitigation **must be treated as wetlands** or else they're not mitigation, and those sites will not protected as wetland mitigation sites.

Recommendation:

Change “**may**” to “**shall**” in last sentence of paragraph. – otherwise those mitigation wetlands will disappear as well.

Section 20.80.330 C, (pp. 85-86 of council packet)

A. No reduction should be allowed that does not meet all of the criteria in subparagraphs 1 AND 2; as drafted its "one or both" of 1 and 2.

B. New paragraph D - note says it relates to fish, but drafted language limits section salmonids, and requires actual use of the wetland by fish. As barriers are removed along Thornton Creek, wetlands that may not now be used by anadromous fish are likely to be re-inhabited. Section should relate to wetlands with any species of fish.

Recommendations:

P. 36, paragraph C, delete "one or"

P. 37, paragraph D, first line, delete "salmonid"

Section 20.80.330 new F, last paragraph (p. 87 of council packet)

Based on our comments above about reliance on hired professionals, we **recommend that the new paragraph be amended by the addition of the underlined language shown below:**

The city shall require buffer averaging to be designed to protect areas of greater sensitivity and function, based on the recommendations of a wetland report prepared by a qualified professional **and concurred in or not disputed by the relevant state or federal resource agencies.**

Section 20.80.350D2 (p. 92 of council packet)

For the same reasons discussed above, we recommend adding the following to the end of the new language in subparagraph 2 (after "qualified professional).

"and concurred in or not disputed by the relevant state or federal resource agency."

Section 20.80.470 (pp. 111 et seq)

You have been told that this ordinance is generally a consensus document. With regard to this key section that is certainly not the case, and we were clear, if not strident, in our comments to the Planning Commission. It is in this section that the ordinance is substantially watered down, to the point that we believe it is actionable before the Growth Management Hearings Board as violations of the GMA and the Countywide Planning Policies. Where other agencies, especially King County, have created a presumption that

3

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CAO PUBLIC COMMENT CC 008

a stream is fish bearing, this ordinance flips that position on its head and presumes that any stream that doesn't have fish now will never have fish. This does nothing to pursue the stated purpose of the CAO, to "restore degraded ecosystems". SMC 20.80.010B1.

The effect of the proposed revisions is to:

- Convert all class II streams that have potential for salmonid fish use to class III streams, reducing their protection by 40 to 50 feet.
- Creating a presumption that stream barriers are permanent if they are not scheduled for removal within six years, without any logical basis and certainly no scientific basis.
- Effectively unclassify **all** piped streams, regardless of their length, their function, their connectivity to unpiped parts of streams, or their potential for removal, by reducing their buffer requirements to 10 feet. Under the existing code and the Gaston case, these streams are entitled to the same protection as the unpiped portions of the stream that they transport.

Truly this is a recipe for the demise of Thornton Creek, and any other degraded stream in the city that can't be restored quickly enough..

Paragraph F (p. 112) does not begin to adequately replace the existing code language classifying as Class II any stream that has the "potential" for being fish habitat. Paragraph F1 is unclear as to how it would treat planted fish, such as are in Echo Lake. Paragraph F2 has the city hiring "qualified professionals" to disprove the findings of the resource agency, WDFW (as was done recently in the Aegis case, without a written contract or Council approval). Paragraph F3 declassifies any stream with a barrier that is not to be removed within 6 years. WSDOT has several in the City that are on WSDOT's list for removal – just not in the next six years! And finally, the Department is granted the authority to downgrade a stream due to a "qualified" professional's determination that "water quality parameters make the stream segment incapable of supporting fish" – again, regardless of anything the resource agency might say.

Section 20.80.480 (pp. 114-119 of council packet)

We do appreciate that the staff are attempting to engage the subject of streams being taken out of pipes. However, a 10 foot buffer would not be sufficient without some consideration for a further building setback, otherwise there is no room allowed for human activity (such as painting the back of the house) without damage to the buffer being likely. WDFW has stated on many occasions that it would be illegal for them to issue hydraulic permits for placing any streams in pipes, so if and when streams are taken out of pipes, they will be converted to open channels, and 10 feet provides basically no protection for those streams.

4

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In paragraph H2, whether an opened channel can support fish access should be determined and agreed on between the City and any relevant resource agency, not determined by the City alone. The same is true for subparagraph 3. If a pipe collapses for any reason, the city cannot legally require that it be restored, since the resource agency cannot be forced to issue a hydraulic permit to put a stream back in a pipe in violation of state law.

Subparagraph H4 is not enforceable. If a neighboring property owner can determine what a setback will be, the City's legislative authority has been delegated to that neighbor, contrary to state law.

CONCLUSION

This proposed ordinance substantially weakens the protections of Thornton Creek, is not supported by best available science, is contrary to regional efforts to restore stream habitats, violates the GMA and the Countywide Planning Policies, and contradicts the purpose of the city's critical areas ordinance.

Sincerely,



Michele McFadden
Attorney for Patty and Timothy Crawford

ATTACHMENT A – MISCELLANEOUS COMMENTS

Definition of reasonable use: (p. 25 of Council packet)

We understand that the proposed amendment removes language from the definition of reasonable use that was added by staff without formal action by the Council to adopt it, and as such the removal of the offending language really is nothing more than a clerical repair that should not even require an ordinance amendment. It does no harm. However, I will repeat the recommendation we made to the Planning Commission, and that is to remove the definition of reasonable use entirely – it serves no valuable purpose in the code. In the alternative, apply the King County Code definition, which reads:

21A.06.950 Reasonable use. *Reasonable use: a legal concept articulated by federal and state courts in regulatory taking cases. (Ord. 10870 § 230, 1993).*

While the latter is not very "definitive", it reflects the correct basis for the use of the term "reasonable use". The existing code language tries to suggest that federal and state law have definitely determined what a "minimum use" is. No such bright line has been drawn – each case depends on its factual base, and the case law sets broad guidelines as to the concept that a regulation that goes "too far" could be a taking, but it has not defined the minimum use to which a property owner is *entitled*. The existing code language suggests that there is a bright line, and therefore misleads the public. In the context of the Critical Areas Ordinance, the existing definition is slanted in favor of property owners at the expense of the Creek, and therefore contradicts the purposes of the critical areas ordinance. We assert that there is always a balance to be struck, and neither should be favored over the other. Any definition should recognize the need for that balance to be struck.

Notices to Title (SMC 20.80.050) (pp.63-64 of council packet)

In the situation that evolved into the case of Timothy Crawford & Patricia Crawford, Respondents v City of Shoreline; and Gaston Enterp. Appellants, the City of Shoreline allowed the Boundary Line Adjustment process to be used to effectively create a new lot, without the benefit of the review that would have been applied to a short plat. A property that had consisted of one subdivided lot and a half of another such lot was deemed to have two lots by the City. The BLA was approved without any regard to the CAO – indeed, the entire new lot was in the buffer of Thornton Creek, as it opens onto the Crawford property (The Gaston parcel is directly adjacent to the Crawfords on the north). Because the citizens of Shoreline can therefore not rely on the proper application of the BLA process to development situations in the City, it is imperative that all BLA's be subject to critical area ordinance review, and should be specified as development activities similar to subdivisions. For purposes of this code section, then, BLA's should be listed in paragraphs A and B. It is critical that **all** of the City's code provisions be considered when using the BLA process to modify boundaries.

Recommendation:

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CAO PUBLIC COMMENT CC 008

Patricia and Timothy Crawford
Residents of the City of Shoreline
Comments on proposed CAO changes

20.20. DEFINITIONS

20.20.044 "Reasonable Use" definition: Good= changed back to original definition. Change was made last year after the last public hearing & Council Approval by City Staff.

20.20.046 "Stream" definition now includes intermittent streams to match the actual stream typing definitions in the "stream" section of the Critical Areas Chapter

20.80.025 APPLICABILITY

D When any provision 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.

This very cite of the code was and is being used in the Aegis case the Judge pointed this out in several decisions

This was added by recommendation of Madrona Consulting in the year 2000 when the State CTED said our 100 foot stream buffers were small. It is to make for a protective code and is meant to be redundant.

20.80.030 EXEMPTIONS

~~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;~~

This is being used in the Aegis case. TC8 or the sidechannel/ditch was created from an area of historic wetlands

L. Educational activities, scientific research, and and outdoor recreational activities, including but not limited to interpretive field trips, bird watching, public beach access including water recreation related activities, and the use of existing trails for horseback riding, bicycling and hiking=, that will not have an adverse effect on the critical area;

Public Beach Access= Echo Lake

Water recreation Activities. Water Ski, Jet Ski?

More invasive and a greater impact= These activities should not be an EXEMPTION in a critical area.

P. Up to six significant trees may be removed from a critical area or a critical area buffer if a Clearing Permit is approved under SMC 20.50.290 and 20.50.300 and includes sufficient mitigation so that there is no net loss of the functions and values of each type of critical area.

Bad!!! Hurts fish.

20.80.050 Notice to Title

A. To inform subsequent purchases of real property of the existence of critical areas, when development is permitted in an identified critical area which is comprised of a regulated critical area and or its associated buffer, a notice to title applicable to the property shall be filed with the King County Department of Records. The notice shall state that critical areas or buffers have been identified on the property and the fact that limitations on actions in or affecting the critical area or buffer may exist. The notice shall run with the land. This notice shall not be required for development by a public agency or public or private utility when:

“Notice shall state limitations “MAY” exist. Why a notice to title if it just “may” mean something? It alludes to a possibility of limitations not being an absolute when dealing with a critical area.

1. Within a recorded easement or right of way; or
2. On the site of a permanent public facility

~~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.~~

This should remain in the code in this Notice to Title Section. It remains in the Fish & Wildlife Habitat Conservation Areas 20.80.280 C.. It should be clear that notices to title exist.

20.80.080 Alterations or development of critical areas – Standards and criteria

~~All impacts to critical areas functions and values shall be mitigated. This section applies to mitigation required with all critical areas reviews, approvals and enforcement pursuant to this Chapter. This section is supplemented with specific measures under subchapters for particular critical areas. The proponent for a project involving critical areas shall avoid, minimize and mitigate the impacts to the critical areas through Mitigation actions by an applicant or property owner shall that occur in the following sequence:~~

“Proponent”= someone who supports a position?? Why not use “Applicant or property owner?? Not a legal owner?? Vested interest? Does the proponent have legal standing? “Revised to make it clear” ? Who is responsible? All impacts are not expected to be mitigated

F. Monitoring the impact and taking appropriate corrective measures.

At whose expense? Follow-up enforcement?

From Mitigating all impacts to Monitoring the impacts.

Subchapter 3. Fish & Wildlife Habitat Conservation Areas

20.80.260

A. Fish & Wildlife habitat conservation areas include nesting and breeding grounds for State and Federal threatened, endangered, critical or priority species as ~~defined~~ listed by the Washington State Department of Fish and Wildlife, including corridors which connect priority habitat, and those areas which provide habitat for species of local significance which have been or may be identified in the City of Shoreline Comprehensive Plan.

Used and will be used in the future in court in Gaston & Aegis

The word listed is misleading. The actual listing comes when species make it to the "Threatened" status. All salmonids are considered at least a priority species but may not be what could be referred to as "listed".

All Streams in Shoreline have existence of salmonid fishes. Salmonids are at least a priority species. Can't we accept this? State it. And live by it. Write it into our code and make it clear. This would help everyone understand what exists in Shoreline.

3. Streams wetlands and their associated buffers that provide significant habitat for fish & wildlife

Being used in Gaston & Aegis

Significant! Definition? We are having present controversy in court with the term Critical habitat. This confuses things more. Even more subjective than the term "critical".

20.80.330 Required Buffer Areas

20.80.330

B. Table of buffers.

Buffers + Setbacks are being used in Gaston + Aegis

Not increasing the buffer sizes at all. Removing the SETBACK to the buffer as part of the process. Setbacks should remain in the code because they demonstrate the purpose of the buffer to remain un-impacted by construction. Streets have setbacks from them. You cannot build in a street. Removing the setback degrades the idea of the no impact buffer.

20.80.330

C. The ~~maximum~~ standard buffer width shall be established, provided that the buffer may be reduced to the minimum buffer listed above if unless the applicant can demonstrate that a smaller area is adequate to protect the wetland functions and – one or both of the following:

Again this has been the drive behind not protecting creeks. Not Best Available Science! that a smaller area is adequate Should not be included! What is this standard? Too subjective. What is adequate?!!!

F. Wetland buffer widths may be modified by averaging buffer widths as set forth herein. Buffer width averaging shall be allowed only where the applicant demonstrates to the City: ~~that the wetland contains variations in sensitivity due to existing physical characteristics; that lower intensity land uses would be located adjacent to areas where buffer width is reduced;~~
In the Aegis case this was used wrong.

F (continued). The city may require buffer averaging to be designed to protect areas of greater sensitivity and function based on the recommendations of a wetland report prepared by a qualified professional.

Qualified Professional is not a State agency scientist. "MAY require..."

Subchapter 7: Stream Areas

20.80.460

A. Streams are those areas where open surface waters produce a defined channel or bed, not including irrigation ditches, canals, storm or surface water runoff device or other entirely artificial watercourses, unless they are used by salmonids or are used to convey streams naturally occurring prior to construction. A channel or bed need not contain water year-round, provided that there is evidence of at least intermittent flow during years of normal rain fall.

The Evergreen School decided they had a stream on their site
Tim Stewart "Ridiculous to protect a dry stream" EVERGREEN SCHOOL
City decision... ditch!

20.80.470 All of the following changes are to help the City's land use cases in court. They also degrade our City.

B. "Type II streams" are those natural streams that are not Type I streams and are either perennial or intermittent and have salmonid fish use ~~have one of the following characteristics:~~

- ~~1. Salmonid fish use;~~
- ~~2. Potential for salmonid fish use; or~~
- ~~3. Significant recreational value.~~

Gaston & Aegis No Potential??

C. "Type III streams" are those natural streams with perennial (year-round) or intermittent flow with channel width of two feet or more taken at there ordinary high water mark that and are not used by salmonid fish ~~and have no potential to be used by salmonid fish.~~

Gaston & Aegis. No potential for salmonid??

E. "Piped stream segments" are those segments of streams, regardless of their type that are fully enclosed in and underground pipe or culvert.

Gaston & Aegis....No protections???

F. For the purposes of this section, "salmonid fish use" and "used by salmonid fish" is presumed for:

1. Streams where naturally recurring use by salmonid populations has been documented by a government agency;
Gaston & Aegis. Naturally re-occurring use? See fish hatchery protections for urban King Co.
2. Streams that are fish passable by salmonid populations from Lake Wash. Or Puget Sound, as determined by a qualified professional based on review of stream flow, gradient and barriers and criteria for fish passability established by the WDF&W.

Gaston & Aegis. Fish passable – Not BAS. Contrary to fish science and state stream regulations Qualified professionals results “using” criteria established by WDF&W. But qualified consultant can directly dis-agree w/ WDF&W.

3. a. “6-year capital improvement plan”
Gaston & Aegis. GMA suggests a 10 year model.

- b. planned removal of the private dams that will result in a fish passable connection to Lake Wash. Gaston & Aegis

The Department may waive the presumption of salmonid fish use for stream segments where a qualified professional has determined there are confirmed, long term water quality parameters making the stream segment incapable of supporting fish.

Gaston & Aegis

Aren't you taking it out...

Violation of National Pollutions standards

20.80.470 The dept may waive the presumption of salmonid fish use. If a qualified professional confirms long term water quality parameters making the stream segment incapable of supporting fish.

Used in the Aegis remand to describe TC8 or the sidechannel/ditch that lies behind the Aegis North Building

Subsection E on intentionally created streams is removed because it creates confusion and conflict with the definition of streams, which does not include artificially created watercourses (as opposed to “intentionally created” ones). FISH? Historical Stream?

20.80.480 Required buffer areas.

- C. ...the can demonstrate that a smaller buffer is adequate to protect the stream functions and

This has been the logic behind all of the appealed permits. Gaston, Aegis Evergreen School

Best available science says it is not adequate.

Buffer may be reduced if applicant can “demonstrate” that a smaller buffer is adequate to protect the stream functions.

D. 6. "piped stream segments"

Gaston decision ruled Thornton Creek in a pipe IS A STREAM!

Previously the city claimed a stream in a pipe not a stream.

It would be impossible to daylight a stream with facilities built in the buffer or over the pipe containing the stream. Once daylighted you would have water running to the open stream with no swale to clean the water.

F. 1(old) "buffer width averaging **shall...**

New – The City **may** require buffer averaging

The Director has always had the power to increase protections for any critical area and has chosen not, ever. The term "MAY" is arbitrary?

1. The ecological structure and function of the buffer after averaging is equivalent to or greater than the structure and function before averaging

What is ecological structure and function? With no definition it cannot be used effectively.

- 3- In no case a buffer can be less than-stated minimum.-25 feet
Gaston This is trouble. Buffers will now be 10 feet from piped streams

G. Stream relocation allowed

Gaston

In the old code relocation was not allowed to facilitate development. Now, it "shall" be allowed and there are no restrictions.

H. 2. Minimum 10 feet to allow restoration and maintenance of piped watercourse.

Gaston

10 Feet is not enough! Irregardless of stream type, this is not enough.

3. Removal of pipes can only be done with the City determines.

Gaston

This is restrictive of an individuals property rights.

3. Permission of neighbors

Gaston

This is restrictive of an individuals property rights. If a Type II stream is daylighted from the pipe that has encased it, and development has been allowed to within 10 feet of the pipe, a standard buffer for a non-buffered stream will not even be an option.



King County
Department of Development
and Environmental Services

0-29-04
KC ORD. 15051

261 pages

120551 (261)

THE CRITICAL AREAS ORDINANCE
as applied to
URBAN PROPERTIES IN UNINCORPORATED KING COUNTY

The regulations described in this fact sheet are effective as of January 1, 2005.

CRITICAL AREA PROTECTIONS

On October 25, 2004, the Metropolitan King County Council approved changes to King County regulations that protect critical areas. These regulations limit development in hazard areas, such as on steep slopes or flood zones, and protect environmentally sensitive areas, such as wetlands and streams. In environmentally sensitive areas, natural buffers are crucial for maintaining water temperature, water quality and habitat. Trees and other natural land cover keep water cool and filter pollutants, which is important for the people, animals and fish that depend on these waters. Science shows that critical areas suffer when properties adjacent to them are developed.

Wetland Categories: King County has adopted the Washington State Department of Ecology's Wetland Rating System for Western Washington. This rating system is used to determine a wetland's category and, in turn, the associated buffers. The rating system manual is available on line at <http://www.ecy.wa.gov/pubs/0406025.pdf>.

Wetland Buffers: The following table summarizes the range of buffer widths for specific categories of wetlands in urban unincorporated King County.

Wetland Category		Urban Buffer Widths
Category I:	Category I wetlands are those that 1) represent a unique or rare wetland type; or 2) are more sensitive to disturbance than most wetlands; or 3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or 4) provide a high level of function.	125 to 215 feet
Category II:	Category II wetlands are difficult (though not impossible) to replace and provide high levels of function.	100 to 200 feet

Wetland Category		Urban Buffer Widths
Category III:	Category III wetlands are 1) wetlands with a moderate level of function (scores between 30 - 50 points) and 2) interdunal wetlands between 0.1 and 1 acre in size. Wetlands scoring between 30-50 points generally have been disturbed in some way, and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.	75 to 125 feet
Category IV:	Category IV wetlands have the lowest level of function (scores less than 30 points) and are often heavily disturbed. These are wetlands that can be replaced and, in some cases, improved.	50 feet

King County may also increase wetland buffers by 50 feet for wetlands with high or moderate wildlife habitat scores, if the wetland is within 300 feet of a Washington Department of Fish and Wildlife (WDFW) priority habitat. The increase is not required if there is a vegetated corridor between the wetland and the priority habitat.

Conversely, the County may decrease the wetland buffer by 25 feet if the applicant takes steps to reduce the impacts of the development on the wetland. Examples include: directing lights away from the wetland, noise screens, and restoring native plants in the buffer.

Aquatic Areas and Aquatic Area Buffers: King County has adopted a new classification system for streams and other water bodies. The classification system is based on the classification adopted by the Washington State Legislature for application to forest practices. The following table summarizes the different classifications and the buffer widths for each type of aquatic area:

Aquatic Area Types (Includes creeks, streams, lakes, rivers and shorelines)		Urban Buffer Widths
S Waters:	Aquatic areas inventoried as shorelines of the state, including segments of streams with mean annual flow greater than 20 cubic ft./second, lakes greater than 20 acres, and marine shorelines.	115 feet
F Waters:	All segments of aquatic areas that are not Type S and that contain fish or fish habitat, including waters used by fish hatcheries.	115 feet
S or F Waters:	Urban basins designated as "high" on the adopted basin conditions map.	165 feet

Aquatic Area Types <i>(Includes creeks, streams, lakes, rivers and shorelines)</i>	Urban Buffer Widths
N Waters: All segments of aquatic areas that are not Type S or F waters and that are physically connected by an above-ground channel system, stream or wetland to Type S or F waters.	65 feet
O Waters: All segments of aquatic areas that are not Type S, F or N and are not physically connected by an above-ground channel system, stream or wetland to type S or F waters	25 feet

Allowed Alterations: Critical area regulations generally restrict or put conditions on development adjacent to or within critical areas. Allowed uses depend on the type of critical area. Given that there are so many different situations, citizens should refer to the "allowed alterations" table within the Critical Areas Ordinance. The table defines which alterations and activities would be allowed. The table can be found in Section 137 of Ordinance 15051, a copy of which is available on line at <http://www.metrokc.gov/ddes/caol/>.

Channel Migration Zones: River channels naturally change course or migrate over time. Buildings, houses and other development located within these areas are at risk of damage or destruction. Migrating rivers are also important for fish and wildlife, particularly for salmon. The gravel and vegetation that falls into rivers as they migrate creates spawning areas and provides nutrients.

King County restricts development within the migration path of some rivers in order to protect the public health, safety and value of private property and to provide important fish habitat.

Channel migration zones are already mapped for the following King County Rivers:

- Lower Tolt;
 - Lower Raging;
 - Middle Green;
 - Three forks of the Snoqualmie River.
- Mapping is underway for the following King County rivers and should be complete by December 2005:
- Cedar
 - White
 - South Fork Skykomish

Critical Aquifer Recharge Areas: Critical aquifer recharge areas occur where surface and rain waters soak into the ground to replenish aquifers. Aquifers provide drinkable water supplies, which are often brought to the surface by wells. Critical aquifer recharge areas include sole source aquifers, and also areas around municipal wells. These water supplies are at risk from pollution and reduced water levels. Soil type and geological characteristics help determine the level of risk. Critical aquifer recharge areas are divided into three categories based on the type of soils, whether there are aquifers or well-head protection areas at risk, and whether the area is on an island. The areas are identified on a map that was adopted as part of the ordinance.

The Critical Areas Ordinance limits land uses and development activities that pose the greatest risk to critical aquifer recharge areas. For example, new hazardous liquid transmission pipelines, golf courses, cemeteries, and wrecking yards are not allowed in Category I areas. New underground storage tanks are allowed in all aquifer recharge areas only if they have appropriate protection to prevent leaks. On-site septic systems on parcels less than one acre in any critical aquifer recharge area must meet specific design standards. In Category III areas, testing is required for saltwater intrusion when new wells are installed within 200 feet of the shoreline.

Hazard Areas: King County regulates a variety of hazard areas to protect public health and safety. Hazard areas include: coal mines, erosion-prone areas, landslide-prone areas, seismic areas subject to severe risk of earthquake damage, steep slopes and volcanic hazard areas. Development is generally not prohibited in hazard areas, but may be limited to certain times of the year or to certain kinds of activities. For example, in erosion hazard areas, clearing is generally allowed only from April 1 to October 1. In seismic hazard areas, appropriate engineering studies may be required.

Wildlife Habitat Conservation Areas:

State, federal and local laws and the King County Comprehensive Plan require the protection of many different animal and plant species. In the urban area, the ordinance establishes specific standards to protect the breeding sites of seven animal species (see insert). If other protected species are identified during project review, appropriate protection standards will be developed based on state and federal agency recommendations.

Species – breeding site protection in urban areas

- bald eagle
- great blue heron
- osprey
- spotted owl
- northern goshawk
- peregrine falcon
- marbled murrelet

Mitigation Requirements: Development that is permitted within a critical area or buffer may have an adverse impact on the critical area. Mitigation requirements vary depending, in part, on the critical area and whether the activity was done with a permit or done illegally. Specific mitigation standards have been adopted for aquatic areas and for wetlands.

Storm Water Controls: King County's Surface Water Design Manual provides drainage requirements for new construction and additions. Drainage review to evaluate and deal with stormwater impacts is required for proposals that add 2,000 square feet or more of impervious surface, or clear more than 7,000 square feet.

There are several types of drainage review, each with different requirements depending on the scope and size of the project and the potential for impact on the surface water system at large. Based on the results of the drainage review, flow control and water quality treatment facilities may be required. In other circumstances best management

practices, such as appropriate placement of splash blocks or appropriate location of roof downspout runoff, may be all that is required.

Most individual single-family residential projects will be covered under *Small Project Drainage Review*. This publication is written in simple easy to understand language to make this process easier. The current version of this publication is available at King County offices, and online at: <http://dnr.metrokc.gov/wlr/dss/swdmapdx.htm>.

TO LEARN MORE

To learn more, access the following Web site:

<http://www.metrokc.gov/ddes/cao>

Amendment 13 (Section 20.80.030.J – Exemptions)

VICE CHAIR PIRO MOVED THAT THE COMMISSION NOT AMEND SECTION 20.80.030 AS PROPOSED BY STAFF TO CREATE A NEW EXEMPTION FOR VIEW ENHANCEMENT WITH A STEWARDSHIP PLAN. COMMISSIONER HALL SECONDED THE MOTION.

Vice Chair Piro thanked the staff for their efforts to try and find some common ground on an issue that has very significant opposing views. However, he said he feels the proposed amendment is flawed on a number of counts, and he urged the rest of the Commissioners to join him in opposing it. He said he agrees with testimony provided by the public that the Growth Management Act makes it quite clear why critical areas are important and should be left as natural as possible. These are areas of environmental significance and it is important to preserve sensitive features, hazardous and steep slopes, soil stability, wildlife habitat, etc.

Vice Chair Piro said the proposed language could allow some undefined notion of view to undermine a key Growth Management Act prerequisite. The Commission should keep in mind that things are different in the community and in the State since the adoption of the Growth Management Act in 1990. It is very much a revolutionary piece of legislation and was not intended to maintain the status quo. In his view, he said he feels the Growth Management Act must trump view desires and things of that nature, and staff's proposed amendment would do just the opposite.

Vice Chair Piro said he is particularly concerned with how loose and undefined a lot of things are in the proposed language. For example, the term "view" is open ended. The Commission should keep in mind that the language would apply citywide and not just in covenant neighborhoods. Therefore, the term could mean anything depending on the location. Even if the Commission feels there should be some type of view exception provision in the ordinance, the proposed language is too ambiguous to be applied in any sort of meaningful way. He commended Commissioner Hall for thoughtfully reviewing the options regarding this issue, but at best, the language needs much more work before the Commission could support a concept of this type. He summarized his belief that the proposed language is a poor proposal and very much out of place to be part of the Critical Areas Ordinance.

Commissioner Broili said he would support Commissioner Hall's proposed amendment, not because he doesn't want to see view preservation in critical areas being addressed but because he would prefer to see a plan that addresses broader margins than just the individual reserves. He said it is his belief that forest or basin plans do not end at property lines. If the Commission wants to consider ways to manage these areas, they must look beyond just the area that is defined as the reserve. The function of a reserve does not end at the property line. The reserves must be reviewed as part of a much broader scope. He said he would support a better proposed approach to a management strategy that looks at the reserves in a more holistic perspective.

Commissioner Broili referred to a comment he made back in January with regard to the cutting of significant trees. He questioned how the City would even approach the issue of determining "net loss."

He cited that it is problematic that there would be a functional loss with each tree removed. The removal of six trees on most suburban lots would be considered significant. Even restored, there would be a net loss between the time of restoration and the functional maturity of the new planting. Even if the Commission were to recommend approval of a Stewardship Plan provision, he would be opposed to the cutting of six significant trees. It should only be done on the basis of a very structured, long-term, holistic strategy.

Commissioner McClelland said she is troubled by the complexity of the whole issue. However, it is important that the Commissioners remember that when the Growth Management Act was passed in 1990, it was not just about preserving, but was intended to balance, as well. Cities were asked to consider what rapid growth was doing to the State, not just to the natural environment, but the highways, etc. They were asked to consider how they could balance the need and desire for growth, which leads to the increase in property values and other benefits enjoyed by citizens of the region, with the need to reserve, conserve and respect the natural environment. She suggested that the Innis Arden Board work to write view preservation and environmental preservation guidelines for their reserves that is consistent with the State regulations that Shoreline is required to comply with. This would force them to really deal with the issue of balance on their own. It is possible that the private party and the public entity would then have documents that compliment each other.

Commissioner McClelland said it appears that people want to use the opportunity to remove a hazardous tree as a way to improve a view, and that is not what should be done. If a view is going to be created or preserved, it should be done in a legitimate way. There should be a provision to allow this without misusing or abusing a City regulation. She said she is leaning more towards the private property perspective than the intent of the Growth Management Act, just so they can get some balance and see if the community can work the issue out. She said she does not believe that tweaking a few policies would satisfy either side of the issue.

Chair Harris said he would vote against the motion because he supports the stewardship program that the staff and Innis Arden Club have worked to create. He said it is quite clear to him that the plan would result in no net loss in the functions and values of each critical area. The proponents of a Stewardship Plan would be required to call upon experts to create a plan, and these experts could judge whether or not a proposed plan is acceptable and follows the criteria outlined in the Critical Areas Ordinance. He summarized that he does not see the proposal as an open ended plan. It is quite explicit about what has to occur before a Stewardship Plan could be approved. He said he would support the staff's proposed language as a good compromise.

Vice Chair Piro commended Commissioner McClelland for the good points she brought forward. He agreed that it is a challenge to balance the goals of the Growth Management Act. However, the design of the law really puts protection of critical areas above the other goals. The way the law is designed, the first thing a community must do is identify the critical areas and put regulations in place to preserve them. Then they are supposed to engage in balancing the remaining goals.

Vice Chair Piro said he would be interested in seeing a proposal that goes beyond the one proposed by staff to address the significant issues. While a Stewardship Plan might still be the best approach, the

proposed language is too arbitrary and subjective. Again, he reminded the Commission that the language would be applied citywide and not just in the Innis Arden community.

Commissioner Hall pointed out that, throughout the hearings, the Innis Arden community has been deeply divided on this issue. However, no one from outside of Innis Arden testified in favor of the Critical Areas Stewardship Plan. When the Commission considers regulations that impact the entire City, he urged them not to just focus on a heated topic that has divided one neighborhood. Instead, they should think about how the proposal would impact the City's ability to regulate all critical areas.

Commissioner Hall said it is important to remember why the City is regulating the critical areas. Many people think this is about just protecting the wildlife and natural environment. But when preparing his proposed language, he was more interested in slope stability, erosion control, water quality, hydrology, etc. He pointed out that steep slopes are regulated under the geologic hazards portion of the Critical Areas Ordinance. The purpose of regulating development on geologically hazardous sites is not primarily to protect the ecosystem. It is primarily because development on steep slopes causes landslides and has an impact on human life and health. As much as it troubles citizens to allow government to regulate private property rights, some of the regulations are in place for the public's own good. When trees are on steep slopes, the City has an obligation to regulate private property to protect the health and safety of people who live in the community.

Commissioner Hall said that while he would support the motion, he would like to revisit the issue in the near future. There has got to be a solution to the problems in Innis Arden. Again, he said the City has the responsibility to regulate activities on steep slopes, and if the Commission tries to split off tree clearing in certain areas from other areas of the city without a very careful look, they could end up in trouble. He said he would rather not include the staff's proposed Stewardship Plan. Instead, they should stick with the current code language for now and then try again in the future.

Vice Chair Piro pointed out that there are very clear and understandable exemptions in the Critical Areas Ordinance for situations such as hazards and emergencies that would take care of trees that could potentially present some harm to the public.

Commissioner Broili said he doesn't want the Commission to be forced into becoming the arbitrator in a community dispute. Whatever decision the Commission makes must be outside of that realm. He said he would vote against the motion if he were confident there was a basin-wide plan that had teeth. He expressed his concern that the issue has not been resolved under the present regime, yet a vegetation plan provision was in place for a number of years prior to the City rescinding it. While he doesn't support the staff's proposed language, he would support a plan that looks at the issue from a holistic point of view that provides discriminately for views. They must first define "view," which has not been done in the proposed language. He said he would support the motion, but with the hope that the Commission would work in the near future to come up with a better approach that addresses the community needs and concerns, and at the same time, protects the reserves and all of Innis Arden.

THE MOTION CARRIED 7-1, WITH CHAIR HARRIS VOTING IN OPPOSITION.

Commissioner Piro commended Commissioner Hall for his work in preparing an alternative proposal for the Commission's consideration. His proposal was extremely well thought out.

Amendment 14 (Section 20.80.030.P – Exemptions)

COMMISSIONER HALL MOVED THAT THE COMMISSION NOT RECOMMEND APPROVAL OF STAFF'S PROPOSED LANGUAGE FOR SECTION 20.80.030.P. VICE CHAIR PIRO SECONDED THE MOTION.

Commissioner Hall expressed his opinion that the language in Section 20.80.030.P was more narrowly written than Section 20.80.030.J. It at least has some built in control to allow for the removal of up to six trees. However, they have heard from citizens that this may or may not seem equitable given different lot sizes. People who have argued in favor of this proposed amendment have spoken about hazards, but he pointed that the ordinance already includes an exemption that allows hazardous trees to be removed. When he visited the reserves, he noticed that this exemption has perhaps been used too liberally to create views. Commissioner Hall reminded the Commission that the language in this section is related to trees in critical areas that are not considered to be hazardous. He said he would prefer not to add a loophole in the ordinance by accepting the staff's proposed amendment.

Vice Chair Piro said a major flaw with the proposed language is that it doesn't provide any definition regarding the size of a buffer, and it is too arbitrary.

THE MOTION CARRIED 7-1, WITH CHAIR HARRIS VOTING IN OPPOSITION.

Amendment 15 (Section 20.80.030.J)

This amendment was addressed as part of Amendment 13 above.

Amendment 16 (Section 20.50.310 – Exemptions From Permit)

Mr. Stewart pointed out that Item A.5 in Section 20.50.310 should be deleted as per the Commission's earlier decision to eliminate the sections in the ordinance related to a Critical Areas Stewardship Plan.

COMMISSIONER HALL MOVED THAT THE COMMISSION RECOMMEND APPROVAL OF THE STAFF'S PROPOSED AMENDMENTS TO SECTION 20.50.310.A, WITH THE EXCEPTION OF ITEM 5. VICE CHAIR PIRO SECONDED THE MOTION. THE MOTION CARRIED 7-1, WITH CHAIR HARRIS VOTING IN OPPOSITION.

Final Commission Action on Critical Areas Ordinance Update

Commissioner Hall emphasized that the regulations for critical areas exist for multiple purposes. He explained that the functions and values the City should protect in a fish and wildlife habitat area are different, in many cases, than the functions and values that should be protected in a wetland. He recalled that the Growth Management Act defines five types of critical areas, and three of them are concerned

solely with protecting human health, life and property (geologic hazard areas, frequently flooded areas, critical aquifer recharge areas). Wetlands provide both a natural ecosystem and a human safety benefit. The fish and wildlife habitat areas regulations are primarily concerned with ecosystem functions and values. He said it is very difficult to regulate development in a way that protects five different things in ten different ways.

Commissioner Hall said he believes Shoreline's existing Critical Areas Ordinance has served the City well and has not been fundamentally flawed. However, there are things that could be emphasized more such as low-impact development approaches, a basin-wide planning approach, etc., to give the ordinance a more holistic look. Before the City updates the ordinance again, this is definitely something the Commission should consider. He summarized, however, that the staff has worked hard to propose amendments to resolve a lot of issues that have come up. The goal of the ordinance is to regulate development under the police power of the City in order to protect values that citizens all hold in common. The amendments proposed by both the staff and Commission will improve the ordinance so it can continue to serve the City well in the future.

Commissioner Hall thanked the citizens who provided comments and suggestions regarding the Critical Areas Ordinance. There were scores of people who testified regarding the ordinance, and appropriate decorum and courtesy were maintained throughout the process. He said he values being part of a community that can have a quality debate of this type.

Chair Harris said that Commissioner Sands indicated to him that, if he were present, he would have voted against the main motion to approve the Critical Areas Ordinance Update as amended by the Commission because he felt it was too far reaching. Chair Harris said that while he supported all of the amendments accepted by the Commission up until tonight's actions, he would vote against the main motion because of the amendments that were just approved. He said he believes the Critical Area Stewardship Plan proposal was adequate and should have been approved as part of the ordinance. He noted that the Stewardship Plan would have required an applicant to prove that the functions and values would be protected through the plans and testimony of an expert. He expressed his belief that the proposal to provide for a Stewardship Plan would have been adequate as proposed by staff.

Commissioner McClelland clarified that the Commission agreed to eliminate the provision related to a Critical Areas Stewardship Plan, not because they didn't think a Stewardship Plan was a good idea, but because they did not think the one proposed would address all of the issues. The Commission reserved the right to reconsider a Stewardship Plan provision in the future.

Commissioner MacCully said that while the Commission would like to be able to preserve views, it is important to remember that views constantly change from the time a property is clear cut and developed. He reminded the Commission that the City's goal should be to improve the environment and not just keep pace. While it would be nice to be able to preserve views, there is also a higher value that must be considered for the City as a whole.

Chair Harris suggested there might be better ways to improve the environment than just maintaining the status quo. Commissioner Broili agreed. He clarified that the City is located within an urban

environment, and there will not be old growth forests in Shoreline. However, if they carefully plan, they can achieve a basin-wide management strategy that looks at how to work within a built environment to mimic the natural models in a way that allows the citizens to live the lives they have become accustomed to, but not at the detriment of the system that supports and sustains them. While they can preserve some of the views, this must be done carefully and discretely from a more holistic approach. This will take careful, thoughtful and slow strategies.

THE MAIN MOTION (PAGE 5 OF THE JULY 21, 2005 MINUTES) TO ADOPT THE CRITICAL AREAS ORDINANCE UPDATED AS AMENDED BY THE COMMISSION WAS APPROVED 7-1, WITH CHAIR HARRIS VOTING IN OPPOSITION.

10. NEW BUSINESS

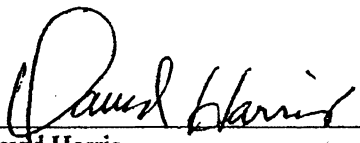
Commissioner Hall offered his home for the Planning Commission and Planning Department staff to hold a going away event for Mr. Stewart. However, he cautioned that during the event, the Commission should not discuss any future business of the Planning Commission. The Commission agreed to hold a going away party for Mr. Stewart on August 18th at Commissioner Hall's home.

11. AGENDA FOR NEXT MEETING

Because the Commission completed their review of the Critical Areas Ordinance Update, the regular August 18th meeting was cancelled.

12. ADJOURNMENT

The meeting was adjourned at 8:47 p.m.


David Harris
Chair, Planning Commission


Jessica Simulcik Smith
Clerk, Planning Commission



SEATTLE-KING COUNTY ASSOCIATION OF REALTORS®

12015 115th Ave. N.E., Suite 195, Kirkland, Washington 98034
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October 24, 2005

The Honorable Mayor Ron Hansen
Members of the Shoreline City Council
17544 Midvale Avenue North
Shoreline, WA 98133

RE: Critical Areas Ordinance

Dear Mr. Mayor and Members of the City Council:

Thank you for the opportunity to comment on the proposed Critical Areas Ordinance.

We appreciate the measured tone of the proposed CAO. In particular, we are pleased to see the proposal offer property owners the opportunity to reduce wetland and stream buffers by protecting function and value of the critical area.

As you debate the CAO, we urge that you keep in mind two related issues. First, the regulatory scheme you adopt should recognize that you are working with an urban, already impacted landscape --- as opposed to a rural or up-stream landscape that offers a far greater opportunity for critical area function and value for protection. Secondly, the CAO must take care not to trump other Growth Management Act goals. All ~~goals~~ must be balanced. It's important to accommodate growth and protect the environment. ^{goals}

Protecting function and value

The chief goal of the CAO is to protect the function and value of the critical area. Buffers are an important tool with which to protect that function and value; however, buffer size is not an indication of buffer quality.

Smaller, managed, "smart" buffers offer immediate benefit to the critical area's function and value. Larger, "dumber" buffers require 100 years of plant succession to return to a native state and offer benefit to that critical area. So, offering property owners an incentive to

CAO PUBLIC COMMENT CC 012

create smaller, smarter buffers is better for the critical area and better for the property owner --- in terms of flexibility.

The ease with which one might achieve the smaller smarter buffer is important. A buffer enhancement and management program should be:

- Affordable
- Easy to understand.
- Possible for the property owner to execute

Wetland replacement and enhancement

An area where adjustments may be needed in recognition of Shoreline's urban context is in the proposed wetland replacement and enhancement ratios (ranging from 1:1 - 16:1). Is it reasonable to expect that a project proponent would be able to find enough land to achieve the wetland creation and enhancement requirements? Might a fee in lieu program be viable?

Wetland buffers

The Washington State Department of Ecology Alternative 3 wetland regulations classify almost all land uses as high intensity land use. Under the alternative, all high intensity land use would be subject to the largest buffers to protect wildlife habitat.

For urban areas like Shoreline, in which all adjacent land uses would be considered high intensity, the flexibility of Ecology's alternative is illusory.

In most instances within an urban context wetland protection should be focused on wetland function and value, not the creation of terrestrial wildlife habitat.

A method of implementation that would make Alternative 3 practicable would be to set the "low" rating as a default. A streamlined critical areas identification process (such as a property-owner completed check list) coupled with defined outcomes (such as mitigations and buffer widths) could respond to site-specific needs for protection greater than that provided by the low rating.

Realtors' Interest

The Seattle-King County Association of Realtors is a 7500-member association representing real estate brokers and agents and related industries in the City of Seattle and throughout King County.

Every day our members assist Seattle residents (or would-be Seattle residents) in purchasing or selling residential or commercial real property. For most homebuyers,

finding housing in Shoreline that's affordable is extremely difficult median priced homes are about \$130,000 more than the median income for a family of four can afford.

What does this have to do with the CAO? The relationship between land supply, housing supply, and housing cost is inextricably linked. Development and planning regulations control housing capacity; housing capacity controls housing supply; and, housing supply relative to demand controls housing prices. To the extent that CAO regulations diminish housing capacity, the CAO forces housing prices upwards.

We believe that the success of the CAO hinges on its full integration with all goals of the GMA, in a balanced a manner.

Our comments on the proposed CAO urge the city to keep the CAO's impact on housing supply in the forefront. We believe the Growth Management Act not only provides the tools with which to do that, but the mandate.

Thank you in advance for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Randy Bannecker", with a long horizontal flourish extending to the right.

Randy Bannecker

October 24, 2005

Comment on Shoreline Critical Area Ordinance

Dear Planning Director and Shoreline City Councilmembers:

I appreciate this opportunity to comment on the draft of the Critical Areas Ordinance Update. I make my comment on behalf of the Thornton Creek Legal Defense Fund, Paramount Park Neighborhood Group and myself.

have some serious concerns in the areas of:

1. Stream definitions and fish habitat
2. Wetlands
3. Hazard Trees and Tree cutting requirements and public notice and input
4. Historic preservation

The state requires protection of our critical areas. The "Pilchuck" decision of the Growth Management Hearings Board states the following. It is unequivocal and clear.

The Act requires cities and counties to protect all fish and wildlife found in designated fish and wildlife habitat conservation areas. Here, the County has defined "fish and wildlife habitat" conservation areas to include all streams, wetlands and riparian areas, areas where threatened and endangered species have a primary association, and saltwater-related habitat. See SCC 32.10.110(14). Although Pilchuck would have preferred a far more inclusive definition of habitat conservation areas, the County was not obliged to agree. Even if the County's definition were inconsistent with the State's "Minimum" Guidelines, the CAO's definition does not violate the Act.

CAO PUBLIC COMMENT CC 013

*Pilchuck, et al. v. Snohomish County, CPSGMHB Case No. 95-3-0047 Final Decision and Order, 1995 WL 903206 p. *27 (December 6, 1995).*

As of now the Draft and SEPA checklist do not provide clear protections for wetlands, fish habitat, trees which are in contention over view issues, or "historic" sites in Shoreline.

Sincerely,

Janet Way

October 19, 2005

Dear City Council Members:

Mayor Ron Hanson

Deputy Mayor Scott Jepsen

Rich Gustafson

Paul Grace

Robert Ransom

Maggie Fimia

John Chang

Re: Critical Areas Issues

My husband and I are twenty-nine year residents of Shoreline. Our sons went through the Shoreline Schools. We lived twenty-three of those years in a house in a cul-de-sac off Eighth Avenue Northwest. Just over six years ago we moved into the Innis Arden neighborhood. I served as Treasurer of the Board from 2001 through 2003. Through my work on the Board and other community activities, I have gotten to know many of the people in the community of Innis Arden. I learned quickly who was interested in the well being of all of the community and who was not. The Board of Innis Arden is made up of a group of diverse people elected by the community of Innis Arden. The Board represents the community just as the City council represents the City of Shoreline.

As you no doubt know, Innis Arden is a covenanted community. Those covenants include homeowners having the right to views of the Puget Sound and the Olympic Mountains. These views provide not only increased property values (which translates to increased tax revenues) but an increased enjoyment and appreciation of our beautiful environment. Please be assured that folks who wish to have the views they are entitled to by the covenants do not hate trees or the environment. We are very much in favor of caring for our environment.

In the first paragraph I referred to those folks who are not interested in the well-being of the total community. These folk have thwarted our duly elected board every step of the way to prevent folks from obtaining the views to which they are entitled. They have even gone so far as to try to overthrow our Board about a year and a half ago. These folks are particularly vehement about our reserves which are greenbelts in the neighborhood. These reserves have not been managed for decades and contain many hazardous trees. Our Board had cut approximately 100 trees that were certified as hazardous by two certified arborists. Unfortunately, certain folks in the neighborhood would rather complain to the City than go to our duly elected Board first with their complaints. Thus, the City slapped a fine on Innis Arden in the amount of \$16,500. The Board decided to fight the fine because it had not violated the City codes. The day before the hearing before the hearing examiner, the City dropped the charges and the fine.

CAO PUBLIC COMMENT CC 014

Our Board continually has a small minority of people second guessing it and continually running to the City with every complaint, legitimate or not. Frankly, I would like to apologize for their behavior which is inappropriate and leads to much dissension in our Community. Please understand that the Board wishes to work with the City. The City needs to recognize that Innis Arden is a view community and that its views add much to our community in that it attracts people who are able to afford homes in the neighborhood, who contribute to the community in their jobs, and civic affairs. Innis Arden is made up of business owners, doctors, lawyers, other professionals and other self-made people. The City of Shoreline needs to continue to attract people who will contribute to the community with jobs, support of our public schools, and civic activities. Providing views for these folks keeps them in this neighborhood and this city, not some other neighborhood. The views of Innis Arden add a unique character to Shoreline and restoring views should be encouraged in accordance with sound environmental principles. I urge you to talk with members of the Innis Arden Board and community members who want the best for Innis Arden both in terms of views and community contributions.

One member of our community, Paul Blaurert has attended City Council meetings showing pictures of our reserves that really aren't accurate as to what is happening there. The runoff that he blames on tree removal is actually a lack of surface water management at the shopping centers at the top of the hill; specifically the QFC and Rite-Aid areas bounded by Third and Eighth Ave. N.W and N.W. Richmond Beach Road. There is no proper drainage nor, I understand, is money allocated for surface water management in Innis Arden. This is most unfortunate as I believe a high percentage (70% or more) of water that comes through Innis Arden comes from those shopping centers. I have personally experienced this runoff as it comes through my family's property. We have even seen the suds from the car washes that the students hold to raise funds for their various activities. If the surface water management problem could be resolved, the erosion would be minimized greatly. Once you understand this fact, you will also understand that removing a few trees especially with mitigation is not going to cause untold of erosion problems.

Another factor to consider is that the tall trees do not let the light onto the ground to allow vegetation to grow so that erosion doesn't occur. Thinning the trees in Innis Arden would be helpful not only for erosion purposes but would enhance the views that our covenants provide for us. We believe that the City needs to hear from our Board and to believe our Board instead of those who wish to make trouble in our neighborhood.

I recently heard Ms. Jamie Clark, Executive Vice President of Defenders of Wildlife on the radio stating that the Endangered Species Act was not meant to stop projects but rather was intended to help us evaluate and mitigate the impact of the project. People in Innis Arden who care about views also care about the environment and are committed to mitigation. Her comments really make sense for Innis Arden. We should be able to remove trees in our reserves or in our private property if we follow carefully worked out procedures for evaluation and mitigation. We should strive to plan lower growing

vegetation that nourish our soil and attract wildlife while storing views of the Puget Sound and the Olympic Mountains.

While I support the draft revisions of the Critical Areas Ordinance, especially the Stewardship Plan, I have a few suggestions. Improvement in language is needed in the definition of hazardous trees wherein hazards to human life are recognized. Trees other than natives should be allowed to be planted (to allow for development of arboretum areas in our reserves and on private property.) The City Council should also be careful in setting buffers as they may be so extensive as to prevent needed care of the Innis Arden reserves as well as private property. There needs to be recognition in Chapter 20.50 .290 Purpose, Part D that views of the Puget Sound and the Olympic Mountains also "contribute to the visual quality and economic value of development in the City."

Therefore, I encourage you to support and vote for the Critical Area Restoration Project as suggested by the Staff of the City of Shoreline with the additional suggestions I have made above. People in Innis Arden should have the opportunity to have their views restored as provided for in our covenants. Not allowing folks in Innis Arden their views constitutes a "taking" of property according the 14th Amendment to the Constitution. I hope you will realize that the "silent majority" of Innis Arden is in favor of keeping our covenants in tact and providing views for those who wish to have them. Thus, I wish to encourage you to vote to adopt language in the critical areas ordinance that will restore views in Innis Arden while caring for our environment.

I appreciate your time in reading my letter and hope you understand our situation much better than before.

Yours sincerely,

June E. Howard, CPA

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

From: bvreeland@tenforward.com [mailto:bvreeland@tenforward.com]

Sent: Monday, January 16, 2006 12:25 PM

To: City Council

Subject: Web Site Contact Form

A contact form has been submitted from the web site:

Name: Robert Vreeland
Address: 520 E. 10th St
City: Port Angeles
State: WA
Zip: 98362
Neighborhood:
Phone: 360-457-0239
E-Mail: bvreeland@tenforward.com

Contact Via: Email

Message:

City Council Members:

I am a retired fishery scientist. I have Bachelor (Oregon State University) and Master (University of Washington) of Science degrees in fisheries and over 30 years of experience with salmonid issues in the Pacific Northwest. I was employed by NOAA Fisheries from 1971 to 1997, where I worked on salmonid habitat, hydroelectric, harvest, and hatchery issues. I lived in the Thornton Creek watershed from 1991 through 2004 and became familiar with Thornton Creek resources and issues through my membership with Thornton Creek Alliance (TCA). I represented TCA on the Thornton Creek Watershed Management Committee and helped to complete the Thornton Creek Watershed Characterization Report (Nov. 2000) for the City of Seattle.

There is no doubt in my mind that Thornton Creek throughout its length in both Seattle and Shortline has been and is presently a salmonid bearing stream. As a resident of the Thornton Creek Watershed in Seattle (near Meadowbrook Pond) I personally observed salmonids in the creek. I observed adult Chinook salmon spawning and adult Sockeye salmon in Thornton Creek adjacent to Meadowbrook Pond. I observed adult Cutthroat in Willow Creek and juvenile Cutthroat in Kramer Creek, both small tributaries of the South branch of Thornton Creek in the Meadowbrook area. I also observed an adult Steelhead in the North branch of Thornton Creek at NE 130th Pl. in 1993 in Seattle and what I believe to be an adult Steelhead in the late winter of 2004 north of NE 155th St., upstream of Twin Ponds, in Shortline. I also viewed photographs of fish taken by residents of the Thornton Creek Watershed that I could clearly identify as adult Chinook and Coho salmon.

As a fisheries professional, I also personally knew two other fisheries scientists (Dr. Percy Washington and Jeff Laufley) who testified under oath that they had observed adult Chinook, Coho, Sockeye, Chum and Cutthroat in Thornton Creek. Additionally I am aware of stream surveys and studies conducted by reputable fisheries scientists that have identified adult and juvenile Chinook, Coho, Cutthroat, and Rainbow salmonids in Thornton Creek. The greatest amount of survey data on

CAO PUBLIC COMMENT CC 015

salmonid use in Thornton Creek has been collected by Washington Trout for the City of Seattle. Surveys conducted by a private consultant in Thornton Creek in the Peverly Pond area (immeditly downstream of Twin Ponds) identified juvenile Chinook, Coho and Cutthroat. Fisheries scientists with the Washtington Department of Fish and Wildlife have also observed salmonids in Thornton creek. All of these observations and data collections have occurred since 1991.

Given the above knowledge, it is irrefutable that Thornton Creek throughout its length "HAS SALMONID USE" and must be so classified in Shoreline and Seattle Critical Area Ordinances.

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

From: S.Kellett [mailto:s.kellett@comcast.net]

Sent: Tuesday, January 17, 2006 1:35 PM

To: City Council

Subject: Shoreline City Council.doc

Shoreline City Council

RE: Critical Area Ordinance

January 17, 2006

Dear Council Members and City Staff,

We have lived in the Hidden Lake/ Boeing Creek area for almost 22 years, which is a beautiful area of the city.

Hidden Lake was created originally by William Boeing, I'm guessing it was in about the 1930's. As a child growing up in Shoreline, I played at the lake in the early 1960's, and I remember the old lake as being larger than the current lake and quite a lot deeper. Up stream from the lake were fish ladders that Mr. Boeing constructed probably about the same time as the lake.

In the mid 1960's erosion problems started to occur in the lake and creek area as a result of the development of the Sears complex. The Sears property used to be a large sandy area the kids nicknamed "The Flats". Below the property about where Denny's is now, at 155th and Aurora was an area that was more or less a swamp. When Sears was developed and the parking lot paved large pipes were installed for the storm water. These pipes were directed to the Boeing Creek area, eventually in the late 1960's the lake was completely filled in with the eroded sand. Erosion also caused problems in the creek area below the lake, from Innis Arden Way to Puget Sound.

In the late 1970's or early 1980's King County constructed a retention pond at approximately 170th and Carlyle Hall road. This pond, to my knowledge is the only retention area slowing the flow of water from the Sears Complex and surrounding roadways. In the early 1990's King County constructed a large retention pond at 175th between 3rd N.W. and 6th N.W. This pond helps control surface water from areas other than the Sears complex.

In 1996 Hidden Lake was restored as a habitat project. On New Years Eve as a result of the storm and melting snow, it created so much surface water run off that it blew out the retention pond on 175th and created the sink hole so large that it made the national news. The dirt sand and sewage washed down the creek and completely filled the lake in. We woke up on New Years day to an unbelievable disaster.

In 1997 the lake was restored once again. Provisions were designed into the lake for removal of eroded sand on an as needed basis. Since the last lake restoration we have

CAO PUBLIC COMMENT CC 016

seen many species of birds and animals. These include, ducks, geese, owls, osprey, otters, quail, beavers, bald eagles, hawks, turtles, herons and muskrats.

The City of Shoreline has a responsibility to not just burden private citizens and developers with regulations; they need to look at their own construction methods such as, last years "Third Avenue Drainage Project". This project was done in the rainiest time of the year. Projects such as these need to be done during times of minimal surface water run off.

I hope that the City of Shoreline will keep these issues in mind when it adopts the new Critical Areas Ordinance" and has made provisions for water retention systems for current and future city projects, specifically the "Aurora Corridor Project" currently being constructed at 155th and Aurora. Any surface water that ends up flowing to Boeing Creek needs to funnel through a retention system.

We have seen the devastation that has been caused by irresponsible development and improper surface water management firsthand.

Respectfully, Steve Kellett

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

From: Steve Schneider [mailto:sgschneider@earthlink.net]

Sent: Tuesday, January 17, 2006 1:46 PM

To: Robert Ransom

Cc: Maggie Fimia; richgud@comcast.net; cindy ryu; Janet Way; Matt Torpey; Carolyn Wurdeman

Subject: CAO Update

Good afternoon Mayor Ransom and council members, and staff,

We are writing to request that you enhance and strengthen the CAO to improve the habitat areas in our city.

We live near the Paramount Park and Little Creek wetland. We feel that we need to provide "wildlife corridors". Our family has enjoyed seeing many varieties of wildlife in our neighborhood, including a barred owl, Eagles, many hawks, woodpeckers, and other varieties of birds. Some years we have had a healthy frog population.

We have included photos of some of the wildlife that we have seen or were in our back yard.

The Critical Areas are at great risk if we don't change the language in the ordinances to strengthen protections. Please do not lower the "Stream Classifications" in Shoreline to reflect the desires of developers who would rather not deal with fish habitat and the buffers that should correspond.

Thank you,

Steve Schneider & Catherine Floit

14802 9th PL. NE

Shoreline, WA. 98155

206.363.0078

sgschneider@earthlink.net

cfloit@earthlink.net

CAO COMMENT CC 017



CAO COMMENT CC 017



CAO COMMENT CC 017

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

From: Tom Murdoch [mailto:tomm@streamkeeper.org]

Sent: Friday, January 20, 2006 8:03 PM

To: Carolyn Wurdeman; Joe Tovar; Matt Torpey

Subject: Shoreline Critical Areas Ordinance

Date: January 20, 2006

To: Shoreline City Council

From: Tom Murdoch, Executive Director
Adopt-A-Stream Foundation

Subject: City of Shoreline Critical Areas Ordinance - Public Record Comments

I am a stream ecologist with 27 years experience surveying streams in North King County and throughout Snohomish County. Currently, I serve as the Executive Director of the Adopt-A-Stream Foundation (AASF) which actively involved in stream survey and fish/wildlife habitat restoration in Mac Aleer Creek.

In the past, I was the Water Resource Supervisor for the Snohomish County Public Works and Planning Departments. In that capacity, I was the principal author of County's first Drainage Ordinance and its Storm Water Utility Rate Ordinance. I also headed up the development of the County's first version of what has now become its Critical Areas Ordinance...I appreciate the pressure that you are facing on this subject.

I am also an Adjunct Professor of Stream & Wetland Ecology at Western Washington University, editor of *Adopting A Stream: A Northwest Handbook* and *Adopting A Wetland: A Northwest Guide*, and co-author of the *Streamkeepers Field Guide: Watershed Inventory and Stream Monitoring Methods*.

For the record, I am a resident of Seattle and live within walking distance of the lower reaches of Thornton Creek.

On several occasions I have been invited to share stream and wetland ecology information with city councils and planning commissions during "work sessions." In those sessions, I provide a short course in ecology that leaves the audience with a clear understanding of what a **watershed** is (the large area of land around a stream that drains into the stream); what a **riparian zone** is (the area of vegetation around a stream, lake or wetland that affects the ecology of that aquatic system); and the functions of **wetlands** (water storage, water pollution filtration, and wildlife habitat).

During these sessions I also introduce the audience to the habits and habitat requirements of salmon, steelhead, and trout...the collective name for these fish is **salmonid**. Streams that flow out of Shoreline include Thornton Creek, Boeing Creek and Mac Aleer Creek. Historically, these stream supported healthy populations of salmonid.

CAO PUBLIC COMMENT CC 018

Salmonid thrived in these streams before non-Indians arrived in the Puget Sound Region because the surrounding riparian zones were in tact. Trees and shrubs provided shade which keeps the air temperature cool and, in turn keeps the water temperature cool...optimum water temperature for salmonid is 50 degrees Fahrenheit. Cool water has the capacity for retaining high levels of oxygen...salmonid require 9 to 11 PPM per liter oxygen.

Leaf litter, branches, and other "coarse organic particulate matter" falls into streams from healthy riparian zones. In turn, that material becomes a source of food for microorganisms which become food for a wide range of underwater insects, fresh water clams, mussel, crayfish and other creatures that live on the bottom of streams, lakes and wetlands. The bottom creatures that you can see without aid of a microscope and have no spines are called **benthic macroinvertebrates** by the scientist. Salmonid consider them food!

In order for your City's streams to be able to support salmonid, your streams need to have:

- healthy riparian zones,
- cool water with high levels of oxygen, and
- an abundant and diverse population of benthic macroinvertebrates.

Your stream channels should also have diverse in-stream habitat that includes **pools** (deep areas with relatively slow moving water) and **riffles** (shallow areas with a slight grade and gravel bottoms).

Salmonid also prefer streams to have areas where trees, large branches and stumps have fallen in the channel; these provide hiding areas for fish and create diversions in stream flow that often result in the creation of pools and riffles in the stream (this material is referred to by the Washington State Department of Fish and Wildlife as **LWD or Large Woody Debris**).

Another factor that will determine what is able to live in your City's aquatic systems is water quality. The majority of the stream data available indicates that quality of your aquatic systems is poor affected by influxes of a variety of pollutants including nutrients from lawns, fecal coliform from a variety of sources, and a range of more exotic materials flushing in from impervious surfaces such as roof tops, parking lots, and driveways (lead, cadmium, zinc, copper, chromium, and mercury have been found in your stream. Unfortunately, your streams' water temperature exceed State standards on a regular basis and the corresponding oxygen levels are lower than State standards on a regular basis...not a big deal for people, but a real problem for salmonid.

Salmonid are sensitive to poor water quality and numbers of fish typically shrink with increases in pollutant loads. Unfortunately, there also are some "human

impacts" from the pollutants flushing from your city into your streams and downstream into neighboring jurisdictions to Lake Washington and Puget Sound.

According to the Washington State Department of Ecology, your streams are also unsuitable for contact recreation by your residents...everyone asks me what that means and I typically respond by saying "if you get your hands in the water, wash your hands before you pick your teeth...and under no circumstances drink the water because there is a good chance that you will get very sick." The City of Seattle now posts Thornton Creek in its lower reaches...see the attached photo of me and a water pollution sign next to the creek in Mathews Beach Park.

Invariably during city council or planning commission presentations, I am asked "how big should our buffers be?" This is a major question that you are facing now, and, as I stated before, I appreciate your predicament...no matter what you decide, you are going to make part of your constituents unhappy.

When asked this question, I generally frustrate the questioner by answering that question with another..."What do you want to protect?"

- Do you want to prevent downstream flooding? If the answer is yes, you will need to have large buffers that are healthy riparian zones. Tree and shrub canopies (*overstory*) in the riparian zones break the energy of falling rain, allowing it to slowly drip to low growing *understory*. Large areas of well drained (pervious) soils in large riparian zones allow rainfall and runoff from surrounding impervious surfaces to infiltrated into the ground, further reducing runoff downstream. By the way, historically your riparian zones averaged 300 feet on either side of your creeks...for more details on this I recommend that you contact Dr. James Karr at the University of Washington (206-543-2100)
- Do you want to protect water quality? If the answer is yes, think about this: scientists at the Smithsonian have concluded that a minimum of 60 feet of undisturbed native vegetation between agricultural fields and Chesapeake Bay to absorb nitrogen and phosphorous in flushing from fields towards the bay...lawns in your City's watersheds are likely more heavily fertilized than those fields. if your buffers are bigger yet, you can begin to reduce the amount of more exotic pollutants I referred to earlier in this discussion.
- Do you want wildlife to have habitat in your city and, if so, what species? This question is complicated. According to the Washington State Department of Fish and Wildlife more than 85% of the State's wildlife inhabit depend on riparian zones for food, shelter and space. stream corridor continuity, you will provide the City's wildlife with a transportation corridor. The larger the riparian zone, the greater the variety of wildlife...if you shrink your riparian zones by reducing stream buffers in your CAO, you will systematically eliminate species.

- Do you want to avoid citizen suits? Section 505 of Public Law 92-500 (the Clean Water Act) gives citizens of the U.S. the authority to take water polluters to Federal Court. It can be argued be that a reduction in buffers will lead to an increase in pollutants in your streams, Lake Washington, and Puget Sound. Similarly, it can be argued that a reduction in stream buffers is detrimental to what is left of the Chinook in Thornton and Mac Aleer Creek, opening the door to citizen suits per the Endangered Species Act.

As you deliberate your CAO be aware that you control the fate of the headwaters of three watersheds. In the cases of Thornton and Mac Aleer Creek the your choices affect other cities as well. If headwater areas are degraded, the lower reaches will be degraded as well.

Last year , I walked the lower reaches of Boeing Creek to the railroad track and the Sound. It has a large riparian zone in that location, but the upstream area is, ecologically speaking, in very poor condition...there is potential to significantly improve the upper riparian area and, as a consequence a natural area in the City.

As I mentioned in my opening comments, AASF is active in Mac Aleer Creek. We located several barriers to fish migration downstream from Interstate-5 as well as several non-point pollution problems. I am pleased to advise, that many of those problems are getting solved by AASF, the Lake Forest Park Stewardship Foundation, the North Shore Chapter of Trout Unlimited, and the Washington State Department of Ecology. Shrinking buffers upstream in the headwater areas will be detrimental to that effort.

You are undoubtedly aware that there is a tremendous ongoing community based effort to restore Thornton Creek fish runs, If not, contact the City of Seattle to learn more about why they are going to require the creek to be daylighted from the parking lot at Northgate Shopping Center.

In conclusion, I urge you not to reduce buffers between new development and streams in the City of Shoreline. Furthermore, I recommend that you consider the inclusion of Low Impact Design Standards such as:

- green roofs on new structures
- native vegetation landscapes around those structures, construction of rain gardens designed to infiltrate stormwater into the ground (eliminate the option of piping water to your streams)
- storm drain filters installed drain grates leading to pipes that where drains to your streams
- and many more...do an internet search on "low Impact Design Techniques" for thousands of ideas...and ask your attorney to brief you on the City of

Tumwater's Low Impact Development Ordinance...it is a good model to consider.

I applaud the fact that you have become a leader to Seattle by not allowing development over streams that have been piped to allow for the option of future "daylighting." I would like applaud you again. Take the lead again and consider increasing your buffers between new development and your streams.

To reduce negative reactions to this concept, add incentives such as increased housing units if structures are constructed on small footprints (build up instead of out), reduce permit fees for new construction, reduce stormwater management rates for new landowners, etc.

This type of approach will result in a win-win situation when you make your decision. Of course, not everyone will be happy, but your actions will be based on good science and legally defensible.

Please place this correspondence into the Public Record of the hearing associated with the City of Shoreline Critical Areas Ordinance.

Tom Murdoch, Director
Adopt-A-Stream Foundation
425-316-8592
tomm@streamkeeper.org



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

From: Carolyn Wurdeman
Sent: Monday, January 23, 2006 5:34 PM
To: Matt Torpey
Subject: FW: Southwoods and CAO comment

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

From: Janet Way [mailto:janetway@yahoo.com]
Sent: Monday, January 23, 2006 5:25 PM
To: cvwj@excite.com; bettelinn@hotmail.com; Maggie Fimia;
SWA85401@allstate.com
Cc: elaine phelps; Carolyn Wurdeman
Subject: Re: Southwoods and CAO comment

Dear Ms. Rundall,
Thanks for this excellent letter of advocacy for South Woods preservation.

With your permission, I'd like to also place it in the record for the
Critical Areas Ordinance amendments.

Please contact me anytime with further questions on this issue or others.

Janet Way
Shoreline City Council

--- Christine Rundall <cvwj@excite.com> wrote:

Janet, et al, I hope this is useful in the discussion of the Southwoods in the
City Council!

Chris Rundall 215-1334
Janet Way, Shoreline City Council, Re: the "Southwoods"

This wonderful wooded property has been the object of my affection since we
moved to the Shoreline area in 1979. We followed it from the time it was DNR
property holding abandoned Navy housing until it was surplus and sold to
the Water Department and Shoreline Public Schools as a potential parking lot,
or an outdoor classroom for the school district and its environmental
education program. After Shoreline became a city, the Woods became an
interest of the Briarcrest Neighborhood, where we lived. A group of us then
became active as a committee hoping to work with the School District and
Shorecrest High School to make it an outstanding educational site for all of
Shoreline Schools, K - 12.

Unfortunately, in 2003, we were forced to sell our house with its official
Backyard Wildlife Sanctuary. Our new location in downtown Seattle and our
physical problems ended our active involvement with the Southwoods. Now we
hear that some developers are salivating over it!

The city is now being tested in its ability to be forward looking! Will it
look at this property as a future wooded natural area for the good of the
working public and school children living in Shoreline? Or will it allow a
short-sighted sale to developers who will log it, scrape it clean of all of
the plants and the layer of top soil that supported them, and walk away with
beau-coup bucks?

CAO PUBLIC COMMENT CC 019

Why is this property so important to the citizens and Briarcrest neighborhood? Areas of Seattle, especially Ballard, are suddenly realizing that the amenities of quiet, soul-soothing places of rest and restoration are in too short supply to meet the needs of our burgeoning population and the noise that goes with it. (While the same is said about sports fields, I imagine they outnumber peaceful, natural wooded places for those who would use them!) As a kind of arboretum, it could be planted entirely in native plants. These natives would be easier to grow and maintain than introduced garden plants that we all know and use at home. This area could then develop into a sort of sanctuary where small animals and migrating birds could live. Which plants? Consult the Native Plant Society; or perhaps horticultural students in need of a study subject could be involved. What birds might be found there? Ask Seattle Audubon Society, with their work in planting areas to become a supportive habitat.

Some of the birds that we had in our sanctuary were not usually found. Predators that preyed on small birds, mice, and rats were Cooper's hawk, sharp-shinned hawk, merlin, red-tailed hawk, and Bald eagles. Other birds not easily found were Townsend's warbler*, golden-crowned kinglet*, ruby-crowned kinglet*, fox sparrow*, humming birds (Annas, rufous, and calliope), Northern flicker, Downey woodpecker, pileated woodpecker** (what a thrill!), yellow-bellied sapsucker*, Bewick's wren*, brown creeper*, red-breasted nuthatch*, Steller's jay, chestnut-backed chickadee*, black-capped chickadee, hermit thrush*, cedar waxwing*, bushtits, varied thrush, Western tanager* come to mind. The greatest prize was the year-round flock of band-tailed pigeons, with their yellow feet and tan band across the fanned-out tail feathers** (* birds not easily found **birds perhaps on a list for concern)

As the numbers diminish, we are reminded that loss of habitat is the primary cause of species decline. Another cause is indiscriminate insect spraying with its double whammy of bird poisoning and bird starvation without the insects the birds depend on.

The Southwoods is most valuable to the community as a natural place for people and wildlife!

Join Excite! - <http://www.excite.com>
The most personalized portal on the Web!

Do You Yahoo!?
Tired of spam? Yahoo! Mail has the best spam protection around
<http://mail.yahoo.com>

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

From: lstein@earthlink.net [mailto:lstein@earthlink.net]

Sent: Monday, January 23, 2006 5:45 PM

To: City Council

Subject: Web Site Contact Form

A contact form has been submitted from the web site:

Name: Linda Stein
Address: 844 N 161st Place
City: Shoreline
State: WA
Zip: 98133
Neighborhood: Highland Terrace
Phone: 206-542-1581
E-Mail: lstein@earthlink.net

Contact Via: Email

Message:

To Shoreline City Council:

It is critical that we do not reduce the buffers along our creeks, since they are necessary for the health of our streams and inhabitants.

Lets go forward as a City and protect our invaluable environment.

We are in trouble as a planet. All the facts are there.
We just need to be willing to face the facts and find a way
to reach common ground on issues that are vital to us all.

I would like to see the City of Shoreline be leaders by taking action towards sustainability in every sphere of life. There is much work to be done.

I would like to see basic classes on "Sustainability" taught in every classroom in the city, regardless of age or subject. I would also like to see a massive educational outreach, that would reach every citizen in Shoreline.

Thank you for your time,

Linda Stein,

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

From: Kevin Fullerton [<mailto:k.fullerton@comcast.net>]

Sent: Monday, January 23, 2006 9:06 PM

To: Carolyn Wurdeman

Subject: Letter from The Sierra Club

City Council Members,

Please see the attached letter from the Seattle Sierra Club. Thanks for your attention.

Kevin Fullerton

CAO PUBLIC COMMENT CC 021

January 23, 2006

Bob Ransom, Janet Way, Cindy Ryu, Rich Gustafson,
Maggie Fimia, Ron Hansen, Keith McGlashan
Shoreline City Council
Shoreline, Washington 98133

City Council Members:

As you know, the Seattle Sierra Club took an active interest in your most recent City Council elections, endorsing three of you for office. We were greatly encouraged by the election results, which indicated that Shoreline residents expect their political leaders to promote effective critical areas protection and environmentally responsible transportation and land use.

We hope that the factional fighting now dominating relations on the council does not hijack efforts to implement initiatives that are important to the environmental community. We thought it timely to remind you of the Sierra Club's top priorities in Shoreline, action on which will be critical to our continuing support:

- Timely completion of both Phase 1 and Phase 2 of the Aurora Corridor Improvement Project, including expansion of bus rapid-transit capacity, pedestrian improvements, and improved water filtration
- No addition of single-vehicle occupancy lanes on 15th Ave. NE between 155th and 175th streets until an exhaustive study of transit options and street efficiencies in that corridor has been completed through an inclusive neighborhood process
- A strengthened critical areas ordinance that provides effective buffer zones around wetlands and any waterway that has ever borne salmonids
- Zoning upgrades that allow lots in traditional single-family neighborhoods to include detached and multiple dwellings

Please feel free to contact me at any time regarding these or similar issues. The Seattle Sierra Club looks forward to increased interaction between our membership and the Shoreline City Council.

Sincerely,

Kevin Fullerton
Chair, Seattle Political Committee

CAO PUBLIC COMMENT CC 021a

RECEIVED

JAN 23 2006

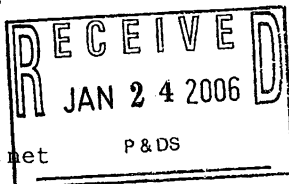
Heidi Costello

City Manager's Office

From: cbelster@comcast.net
Sent: Monday, January 23, 2006 4:07 PM
To: City Council
Subject: Web Site Contact Form

A contact form has been submitted from the web site:

Name: Clark B. Elster
Address: 1720 NE 177th St.
City: Shoreline
State: WA
Zip: 98155
Neighborhood: North City
Phone: 363-3026
E-Mail: cbelster@comcast.net



• COUNCILMEMBER	
• FULL COUNCIL	6
• CITY MANAGER	8
• STAFF	12-15
• FILE	she Tovar
	Nath T
	X

Distribution only per Bernard

Contact Via: Email

Message:

I fully support the new Council majority in its efforts to restore and establish a collegial and collaborative working council relationship between members, staff and with all Shoreline citizens in the deliberative process.

With the exception of a rancorous beginning, last week's council meeting was notable by the courteous and attentive exchanges between members, staff and the public. I am encouraged that at last, city issues are being or will be addressed comprehensively.

With that thought in mind, I urge you to remand the Sensitive Areas development code back to the planning commission for further consideration. As presently drafted, the code appears seriously weakened at the expense of our environment and neighborhood character and to the potential benefit of a voracious development industry known for ill conceived and harmful development.

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

From: Jim Staley [mailto:staleyjs@msn.com]

Sent: Tuesday, January 31, 2006 9:25 PM

To: Matt Torpey

Subject: Re: Notice of Public Hearing- City of Shoreline Critical Areas Ordinance

Dear Mr. Torpey,

I am attaching a letter to be sent to the City Councilors regarding the CAO. Should I also send a hard copy or is that necessary?

Thanks for notifying me of the meeting.

Sincerely,

Jim Staley

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

From: Matt Torpey

To: alwagar@verizon.net ; aryahtov@yahoo.com ; bvreeland@tenforward.com ;
cbeister@comcast.net ; chucklesd2@hotmail.com ; cotco@comcast.net ; csolle@earthlink.net ;
csteward@stewardandassociates.com ; cwwjr@excite.com ; dbun461@ecy.wa.gov ;
gini_paulsen@yahoo.com ; gwingard@earthlink.net ; hollinj@comcast.net ; iken@cted.wa.gov ;
jereeves@gmail.com ; k.fullerton@comcast.net ; kohn@u.washington.edu ; lstein@earthlink.net ;
maggie_taber@ml.com ; mlmcfadden@centurytel.net ; p.blauert@comcast.net ;
profgrisse@comcast.net ; riro461@ecy.wa.gov ; rphelpswa@earthlink.net ;
s.kellett@comcast.net ; sgschneider@earthlink.net ; cfloitt@earthlink.net ; staleyjs@msn.com ;
tomm@streamkeeper.org ; vkwestberg@toast.net

Sent: Tuesday, January 31, 2006 10:08 AM

Subject: Notice of Public Hearing- City of Shoreline Critical Areas Ordinance

You are receiving this email because you have commented on the City of Shoreline Critical Areas Ordinance via email. The City of Shoreline City Council has decided to re-open the public comment period for the proposed Critical Areas Ordinance for additional comments related to all items, comments and testimony received after October 24, 2005.

The City Council will hold a public hearing to solicit comments on the moratorium on Monday, February 13, 2006 at 8:00 p.m. in the Mount Rainier Room, Shoreline Conference Center, 18560 1st Avenue NE, Shoreline.

Please see the attached Public Notice.

Sincerely,

Matthew Torpey

City of Shoreline

<<Public Notice.doc>>

CAO PUBLIC COMMENT CC 023

1 February 2006

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

Dear Councilors,

My wife, Sonja, and I advocate the adoption of exemptions to the Critical Areas Ordinances (CAO) to allow view restoration and maintenance for mountain and water views for residents of Innis Arden. Here is a brief summary of the reasons for our request:

1. Innis Arden is a unique neighborhood in the City of Shoreline because Innis Arden has restrictive covenants that enable residents to have mountain and Puget Sound views. Please respect and support the policies and intent of this neighborhood, which is a vital and important part of the City.
2. Property values for those Innis Arden residents who have lost their views have declined relative to those who have no opportunity for views, which is an unfair policy to owners of view properties in a view neighborhood.
3. The taxes for the City will be increased if homes with views are allowed to restore and maintain them.
4. The resources and expenses required by the City to continuously monitor activities in the Innis Arden Reserves are unnecessary in that the Innis Arden Board already supervises the activities in the Reserve areas according to our covenants that are consistent with the CAO. Why should Shoreline residents who do not reside in Innis Arden have to pay for these monitoring expenses when a mechanism already exists for this and costs nothing to the City?
5. Innis Arden is the recipient of large volumes of runoff that come from paved and developed areas that lie in Shoreline East of 8th Avenue NW and outside of Innis Arden. This runoff causes many fold greater problems to Innis Arden properties and the reserve areas in comparison to the maintenance and view restoration work in the Reserves.
6. The streams of Innis Arden are not and never have been salmon-bearing waters and should not be subjected to the regulations required for maintenance of salmon and other fisheries.
7. If the City of Shoreline would adopt policies that permit view restoration and allow management, Innis Arden can convert the Reserves into beautiful park-like areas that will be attractive and useful to residents. As it is now, the reserves are ugly, overgrown and hazardous because inflexible regulations have prevented Innis Arden from restoration efforts that would enable us to achieve the long-term goal of developing the Reserves into beautiful parks.

In conclusion, we encourage the City to work with Innis Arden to develop CAO policies that are a win – win situation for all.

We appreciate the opportunity to express our views to the Council.

Sincerely,

James and Sonja Staley <staleyjs@msn.com>
18545 Springdale CT NW

CAO PUBLIC COMMENT CC 023a

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

From: Robert and Judy Allen [<mailto:allenjnb@yahoo.com>]

Sent: Wednesday, February 01, 2006 9:47 PM

To: d.fosmire@comcast.net; Matt Torpey

Cc: allenjnb@yahoo.com; Brian Dodd; Michael L. Jacobs; Carol Solle; Maggie Taber

Subject: Re: Ordinance No. 398

Good letter Dave. We need to continue give them reasons to work in our favor. Bob***

--- d.fosmire@comcast.net wrote:

Dear Council members,

As a member of the Innis Arden community I take great exception to the removal of staff recommendations and the dismissal of community comments by the Planning Commission. Specifically, I object to the removal of the Critical Area Stewardship Program by the Planning Commission and the removal of private recreational trails as a target of hazardous trees. Furthermore, I object to recent characterizations of the Innis Arden Board's management of the 52 acres of Innis Arden Reserves as "illegal", "clear cutting", or using "loopholes".

During the past six years, the Innis Arden Club, Inc. and its members have spent considerable resources in excess of \$300,000 to develop Vegetation Management Plans, obtain Clearing and Grading Permits, and provide analysis of these 52 acres from Arborists, Geo-technical Engineers, Stream Biologists, and Surveyors. Yet year by year the City has limited the Club's ability to manage its Reserves for the safety and enjoyment of its residents. Last year, the 1997 Vegetation Management agreement between the City and the Club was revoked by City Staff. Then, City staff informed the Club that no more Clearing and Grading permits would be issued for view restoration which is mandated by the Club's covenants. And finally, the City issued a moratorium on the removal of hazardous trees.

First, I ask the City Council to restore the definition of a hazardous tree to include danger to recreational trails and private forestland as part of Ordinance 398. The Innis Arden Club, Inc. and its 538 shareholders own the Reserves and are strictly liable for any injury or damage which occurs within or next to the Reserves, cf *Degel v. Majestic Mobile Manor, Inc.* 129 WN2d 43, 914 P.2d 728 (1996). Whether the cause of this injury or damage is a result of falling trees, poorly maintained trails, assaults that occur from hidden positions, and lack of access by police or emergency personnel, the Club bears the responsibility for the safety of its residents and the public. The Club merely wishes to maintain this acreage for the enjoyment of its residents following established forestry management standards. The City is attempting to force the Club to apply development standards to areas that will never be developed and are in fact a third growth edge forest that is subject to the dangers inherent to that category of forest. Several small fires and disease have occurred in the Reserves over the past decade and a lack of ability to thin trees, remove dead and diseased trees to prevent crown wildfires presents a substantial risk to the community. Unless the Club can effectively manage the Reserves to reduce the danger, global warming and droughts over the future decades will eventually cause a disastrous event to occur in our community. Since the Reserves run through Innis Arden in three locations from Puget Sound to the top of the hill, any disease or fire will

affect the entire community. If the Council takes away the Club's ability to remove hazardous, diseased, and dead trees, the Club must take action to protect its residents safety.

Secondly, I ask the Council to pass a Critical Areas Stewardship Program as part of the CAO. Restoration and preservation of views of Puget Sound and the Olympic Mountains are a valuable asset to the Innis Arden community and are protected by its covenants. In 2001 the King County Assessor's Office removed over \$15,000,000 of land value from at least 300 Innis Arden properties due to complete or partial loss of these views. This lost value has not been recovered. View restoration could add considerable monetary value to the properties in Innis Arden and create a larger tax base for the City of Shoreline. By removing any ability of the Club to manage its 52 acres of Reserves with a Vegetation Management Plan under a City defined Critical Areas Stewardship Program, the City is engaged in a takings of economic value from its citizens. Innis Arden residents are guaranteed more than the reasonable use of their lots for homes, they are entitled to enjoy some of the most beautiful views this region has to offer. The Planning Commission, for whatever reasons its members concocted, disregarded a City staff recommendation to include a stewardship program. The Washington State Department of Natural Resources offers exactly such a program to residents of the state for the management of forest acreage 20 acres and larger in unincorporated areas of the state. The state recognizes the benefits of forestry management for fire suppression, tree harvesting, and wildlife enhancement. Again, if the Council ignores its own staff's recommendations, Innis Arden Club, Inc. will be forced to take action to protect the rights of its residents.

Sincerely,

David Fosmire

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

From: john hollinrake [mailto:hollinj@comcast.net]

Sent: Sunday, February 05, 2006 8:45 PM

To: Ian Sievers

Cc: jacobsmichaell@qwest.net; Matt Torpey

Subject: Critical Area Ordinance - Hazardous Trees

Mr. Sievers:

Innis Arden and its residents need the ability to manage its privately owned properties (including critical areas) as follows:

1. Protect residents from hazardous conditions, including hazardous trees. This would include protecting residents who are hiking on the established trails and children who are playing off trail. It also includes protecting residents, especially children, playing in their yards which are on or adjacent to critical areas.

In the last 4 years, 7 trees have fallen on my property. One tree smashed the storage building on my property. Numerous other trees have fallen in the community owned property adjacent to my property. In addition, 2 of my neighbors' trees fell onto areas on my property in which my children play.

Hazardous trees pose a significant risk to the residents of Innis Arden. We need the ability to protect ourselves from these hazards.

Furthermore, the primary role of government is to protect the life and property of its citizens. Accordingly, the City needs to establish reasonable rules and procedures to protect the residents of Innis Arden from hazardous conditions. I am concerned that if the City fails to fulfill its duties regarding potential hazards, citizens may be injured and the City may be sued for failure to properly protect its citizens. In addition, if the City adopts overly restrictive rules regarding hazardous trees, they may be successfully challenged by Innis Arden residents in court.

2. The courts have ruled that Innis Arden was established as a view neighborhood. Much of the enjoyment and value of our homes comes from our views of the Puget Sound and Olympic Mountains. I believe the residents of Richmond Beach and the Highlands also highly value their views of the Puget Sound and Olympic Mountains.

The views in Innis Arden are protected by restrictive covenants. These covenants prohibit view blocking trees on both privately owned properties and on the community owned properties.

To protect our quality of life and the value of our properties, we need the ability to manage the trees in critical areas (both on residential lots and on community owned areas) in a manner that protects our views in an environmentally sensitive manner. The vegetation management plan implemented in the Grouse Reserve has been a great success and is a model for other critical areas.

To protect our quality of life and our property values, the City should adopt procedures such as the Critical Area Stewardship Plans and tree removal for views rules proposed by the City Staff last year. The City should also consider the adjustments to these rules proposed by Innis Arden representatives, including Mr. Jacobs.

If the City does not allow the residents of Innis Arden to manage its critical areas in a manner that protects their quality of life and their property values, the residents of Innis Arden will be forced to protect their property rights by bringing legal action against the City.

I am hopeful that the City will adopt reasonable rules that will protect the residents of Innis Arden from hazards and also allow us to protect our quality of life and our property values.

Please let me know if you would like to discuss the foregoing matters.

John Hollinrake
1048 NW Innis Arden Drive
Shoreline, WA 98177



NOTICE OF PUBLIC HEARING OF THE SHORELINE CITY COUNCIL

All interested persons are encouraged to attend the public hearing and provide written and/or oral comments.

What: The City of Shoreline is considering adoption of Ordinance No. 398, which would adopt updated development regulations to protect environmentally critical areas pursuant to the requirements of the Growth Management Act, RCW 36.70A060(2).

The City of Shoreline City Council has set February 13, 2006 for an additional public hearing to accept public comment regarding proposed amendments to the city's critical areas regulations or critical areas ordinance (CAO). Public comment shall be directed to one of two topical areas:

1. Any public comment, written or oral, received at or after the October 24, 2005 City Council hearing.

The City Council held its first open record public hearing on the CAO during a regular meeting on October 24, 2005. At that time, the Council received proposed code amendments from the Shoreline Planning Commission and copies of all of the comment letters and public testimony that had been previously received by the Commission. The Council also heard citizen comments that evening, and reviewed a letter from the Washington State Department of Fish and Wildlife (WDFW), as well as a staff response to the WDFW letter.

Since the October 24, 2005 meeting, additional written and oral comments have been directed to the City Council on this subject. Copies of the October 24, 2005 documents, post-October 24, 2005 comment letters and emails, as well as minutes of the Council meetings where citizens spoke on this subject, are available for public review at City Hall. Please contact Matt Torpey (206-3826) for more information.

2. Proposed City Council amendments to the Planning Commission recommendations.

The City Council may decide to adopt the Planning Commission recommendations as set forth in Ordinance No. 398, or they may wish to consider certain amendments. The Council invites public comment on several amendments that have been drafted and posted on the City's web site at www.ci.shoreline.wa.us

Scope of Invited Public Comment on the Proposed Amendments:

This may be your only opportunity to submit written comments on the above proposal. Written comments must be received at the address listed below before **5:00 p.m. February 6, 2006** in order to be forwarded to the City Council prior to the hearing on February 13th. Please forward comments to the City of Shoreline Planning and Development Services Department,

17544 Midvale Avenue North, Shoreline, WA 98133 (attention: Matt Torpey). Upon request, a copy of the subsequent final threshold determination for this proposal may be obtained together with the City Council decision on the proposed amendments.

When: Monday, February 13, 2006 - 8:00 p.m.

Where: Mount Rainier Room of the Shoreline Conference Center
18560 First Avenue NE, Shoreline, Washington

Additional Information may be obtained from:

Matthew Torpey, Planner II
City of Shoreline
17544 Midvale Ave North
Shoreline WA 98133
Telephone: (206) 546-3826

Any person requiring a disability accommodation should contact the City Clerk at 546-8919 in advance for more information. For TTY telephone service call 546-0457. Each request will be considered individually according to the type of request, the availability of resources, and the financial ability of the City to provide the requested services or equipment.

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