

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

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

PROBLEM/ISSUE STATEMENT:

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

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

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

FINANCIAL IMPACT:

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

RECOMMENDATION

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

Approved By: City Manager

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City Attorney

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INTRODUCTION

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

The Growth Management Act defines critical areas as:³

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

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

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

BACKGROUND

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

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

¹ RCW 36.70A.060(2)

² RCW 36.70A.172(1).

³ RCW 36.70A.030(5).

- Elimination of the disparity in levels of protection between wetlands and streams.
- Significant increases in Wetland replacement and enhancement ratios.
- Clarification of the terms “salmonid fish use”.
- Clarification that Fish and Wildlife Habitat areas are places formally designated by the City of Shoreline, based upon a review of BAS and input from the Washington Department of Fish and Wildlife, Washington Department of Ecology and other agencies.
- A new provision encouraging the restoration of piped and denigrated watercourses.
- A new provision allowing for view preservation and enhancement in critical areas and buffers, if a Critical Area Stewardship Plan, which will protect and enhance critical area functions and values, is developed, approved and implemented.
- Amends the definition of “reasonable use”

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

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

Public Comment:

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

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

Any member of the Council or public may view all of the public comments in their entirety at www.cityofshoreline.com. On the main page of the City's website is a listing for “Critical Areas Ordinance”. Following this link will lead to all provided comments presented chronological order. Attaching all public comments received by the Planning

Commission would prove to be overwhelming due to the excessive length of the combined comments (over 500 pages).

SEPA:

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

State and Agencies with Jurisdiction Review:

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

RECOMMENDATION

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

ATTACHMENTS

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

ORDINANCE NO. 398

**AN ORDINANCE OF THE CITY OF SHORELINE,
WASHINGTON AMENDING CRITICAL AREAS REGULATIONS
AND 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 OCTOBER 24, 2005

Mayor Ronald B. Hansen

ATTEST:

APPROVED AS TO FORM:

Scott Passey
City Clerk

Ian Sievers
City Attorney

Date of Publication: October 27, 2005
Effective Date: November, 1, 2005

Draft Revisions for Critical Areas Protection

Chapter 20.20

Definitions

Critical Areas An area with one or more of the following environmental characteristics:

A. Geologic hazard areas, including but not limited to:

Steep slopes;

Landslide hazard areas;

Seismic hazard areas; and

Erosion hazard areas;

B. Flood plain hazard areas;

~~C. Soils classified as having high water tables;~~

~~D. Soils classified as highly erodible, subject to erosion, or highly acidic;~~

~~E. Seismic hazard areas;~~

~~FC. Stream corridors areas;~~

~~G. Estuaries;~~

~~HD. Aquifer recharge areas;~~

The definition of critical areas is proposed to be updated to be consistent with GMA and the City's adopted code sections.

~~EI. Wetlands and wetland transition areas;
and~~

~~FJ. Fish and wildlife Hhabitat conservation
areass of endangered species.~~

(Ord. 352 § 1, 2004).

20.20.044 R definitions.

Reasonable Use The minimum use to which a property owner is entitled under applicable State and Federal constitutional provision, including takings and substantive due process. ~~Reasonable use shall be liberally construed to protect the constitutional rights of the applicant.~~ (Ord. 324 § 1, 2003).

Removing the last sentence will define Reasonable Use without inferring what level of direction the City should take. This is similar to definitions used by several Puget Sound jurisdictions. While not precisely defining the term "reasonable use" it infers that the concept is left to judicial decision and case law.

20.20.046 S definitions.

Streams Those areas ~~in the City of Shoreline~~ where surface waters produce a defined channel or bed, not including irrigation ditches, canals, storm or surface water runoff devices 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 last sentence is added to improve consistency with SMC 20.80.470 that includes intermittent streams in the classification of stream types. The sentence is derivative of language used by King County, Lake Forest Park and other jurisdictions.

[All other definitions in Chapter 20.20 SMC would remain unchanged.]

Draft Revisions

Chapter 20.50 Development Standards

Subchapter . Tree Conservation, Land Clearing and Site Grading Standards

- 20.50.290 Purpose.
- 20.50.300 General requirements.
- 20.50.310 Exemptions from permit.
- 20.50.320 Specific activities subject to the provisions of this subchapter.
- 20.50.330 Project review and approval.
- 20.50.340 Basic operating conditions and standards of performance.
- 20.50.350 Development standards for clearing activities.
- 20.50.360 Tree replacement and site restoration.
- 20.50.370 Tree protection standards.
- 20.50.290 Purpose.**

The purpose of this subchapter is to reduce the environmental impacts of site development while promoting the reasonable use of land in the City by addressing the following:

- A. Prevention of damage to property, harm to persons, and environmental impacts caused by excavations, fills, and the destabilization of soils;
- B. Protection of water quality from the adverse impacts associated with erosion and sedimentation;
- C. Promotion of building and site planning practices that are consistent with the City's natural topography and vegetative cover;
- D. Preservation and enhancement of trees and vegetation which contribute to the visual quality and economic value of development in the City and provide continuity and screening between developments;

- E. Protection of critical areas from the impacts of clearing and grading activities;
- F. Conservation and restoration of trees and vegetative cover to reduce flooding, the impacts on existing drainageways, and the need for additional stormwater management facilities;
- G. Protection of anadromous fish and other native animal and plant species through performance based regulation of clearing and grading;
- H. Retention of tree clusters for the abatement of noise, wind protection, and mitigation of air pollution;
- I. Rewarding significant tree protection efforts by granting flexibility for certain other development requirements;
- J. Providing measures to protect trees that may be impacted during construction;
- K. Promotion of prompt development, effective erosion control, and restoration of property following site development; and
- L. Replacement of trees removed during site development in order to achieve a goal of no net loss of tree cover throughout the City over time. (Ord. 238 Ch. V § 5(A), 2000).

20.50.300 General requirements.

- A. Tree cutting or removal by any means is considered a type of clearing and is regulated subject to the limitations and provisions of this subchapter.

- B. All land clearing and site grading shall comply with all standards and requirements adopted by the City of Shoreline. Where a Development Code section or related manual or guide contains a provision that is more restrictive or specific than those detailed in this subchapter, the more restrictive provision shall apply.
- C. **Permit Required.** No person shall conduct clearing or grading activities on a site without first obtaining the appropriate permit approved by the Director, unless specifically exempted by SMC 20.50.310.
- D. When clearing or grading is planned in conjunction with a new or expanded building or complex that is not exempt from the provisions of this subchapter, all of the required application materials for approval of tree removal, clearing and rough grading of the site shall accompany the development application to allow concurrent review.
- E. The Director may require the submittal of required application materials for approval of tree removal, clearing and rough grading of the site with an application for formal subdivision, short subdivision, conditional use or any other land use approval in order to meet the purpose and intent of this subchapter.
- F. A clearing and grading permit shall be required if the regulated activity is not associated with another development application on the site that requires a permit.
- G. No clearing shall be allowed on a site for the sake of preparing that site for sale or future development where no specific plan for future development has been submitted. The Director may issue a clearing and grading permit as part of a phased development plan where a conceptual plan for development of the property

has been submitted to the City and the owner or developer agrees to submit an application for a building permit or other site development permit in less than 12 months.

- H. Replacement trees planted under the requirements of this subchapter on any parcel in the City of Shoreline may not be removed without the written approval of the Department.
- I. Any disturbance to vegetation within critical areas and their corresponding buffers is subject to the procedures and standards contained within the critical areas overlay district chapter of the Shoreline Development Code, Chapter 20.80 SMC, Special Districts, in addition to the standards of this subchapter. The standards which result in the greatest protection of the critical areas shall apply. (Ord. 238 Ch. V § 5(B), 2000).

20.50.310 Exemptions from permit.

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

- 1. Emergency situations involving danger to life or property or substantial fire hazards. Any tree or vegetation which is an immediate threat to public health, safety, or welfare, or property may be removed without first obtaining a permit regardless of any other provision contained in this subchapter. If possible, trees should be evaluated prior to removal using the International Society of Arboriculture method, Hazard Tree Analysis for Urban Areas, in its most recent adopted form. The party removing the tree will contact the City regarding the emergency, if practicable, prior to removing the tree.

The emergency exemption is revised to require the party involved to contact the City within one day after the emergency, and to require professional evaluation and site restoration following the emergency.

The section is also changed to apply to both private and public property.

2. Removal of trees and/or ground cover by the City and/or utility provider in situations involving immediate danger to life or property, substantial fire hazards, or interruption of services provided by a utility. The City retains the right to dispute the emergency and require that the party obtain a clearing permit and/or require that replacement trees be replanted as mitigation.
3. Installation and regular maintenance of public utilities, under direction of the Director, except substation construction and installation or construction of utilities in parks or environmentally sensitive areas.
4. Cemetery graves involving less than 50 cubic yards of excavation, and related fill per each cemetery plot.
5. Removal of trees from property zoned RB & I, CB & NCB and NB & O, unless within a Critical Area or Critical Area Buffer.

This amendment would exclude commercial zoning districts from the provisions of tree conservation.

B. Partial Exemptions. With the exception of the general requirements listed in SMC 20.50.300, the following are exempt from the provisions of this subchapter, provided the development activity does not occur in a critical area or critical area buffer. For those exemptions that refer to size or number, the thresholds are cumulative during a 36-month period for any given parcel:

1. The removal of up to six significant trees (see Chapter 20.20 SMC, Definitions) and associated removal of understory vegetation from any property.
2. Landscape maintenance and alterations on any property that involves the clearing of less than 3,000 square feet, or less than

1,500 square feet if located in a critical drainage area, provided the tree removal threshold listed above is not exceeded. (Ord. 238 Ch. V § 5(C), 2000).

20.50.320 Specific activities subject to the provisions of this subchapter.

All activities listed below must comply with the provisions of this subchapter. For those exemptions that refer to size or number, the thresholds are cumulative during a 36-month period for any given parcel:

- A. The construction of new residential, commercial, institutional, or industrial structures or additions.
- B. Earthwork of 50 cubic yards or more. This means any activity which moves 50 cubic yards of earth, whether the material is excavated or filled and whether the material is brought into the site, removed from the site, or moved around on the site.
- C. Clearing of 3,000 square feet of land area or more or 1,500 square feet or more if located in a critical drainage area.
- D. Removal of more than six significant trees from any property.
- E. Any clearing or grading within a critical area or buffer of a critical area.
- F. Any change of the existing grade by four feet or more.
- G. Any work that occurs within or requires the use of a public easement, City-owned tract or City right-of-way.

- H. Any land surface modification not specifically exempted from the provisions of this subchapter.
- I. Construction or creation of new impervious surface over 1,500 square feet in size, or 500 square feet in size if located in a landslide hazard area or critical drainage area.
- J. Any construction of public drainage facilities to be owned or operated by the City.
- K. Any construction involving installation of private storm drainage pipes 12-inch in diameter or larger.
- L. Any modification of, or construction which affects a stormwater quantity or quality control system. (Does not include maintenance or repair to the original condition).
- M. Applicants for forest practice permits (Class IV – general permit) issued by the Washington State Department of Natural Resources (DNR) for the conversion of forested sites to developed sites are also required to obtain a clearing and grading permit. For all other forest practice permits (Class II, III, IV – special permit) issued by DNR for the purpose of commercial timber operations, no development permits will be issued for six years following tree removal. (Ord. 238 Ch. V § 5(D), 2000).

20.50.330 Project review and approval.

- A. **Review Criteria.** The Director shall review the application and approve the permit, or approve the permit with conditions; provided, that the application demonstrates compliance with the criteria below.

1. The proposal complies with SMC 20.50.340 through 20.50.370, or has been granted a variance.
2. The proposal complies with all standards and requirements for the underlying permit.
3. If the project is located in a critical area or buffer or has the potential to impact a critical area, the project must comply with the critical areas standards.
4. The project complies with all requirements of the engineering standards and the Surface Water Design Manual.
5. All required bonds or other assurance devices are posted with the City.

B. **Professional Evaluation.** In determining whether a tree removal and/or clearing is to be approved or conditioned, the Director may require the submittal of a professional evaluation and/or a tree protection plan prepared by a certified arborist at the applicant's expense, where the Director deems such services necessary to demonstrate compliance with the standards and guidelines of this subchapter. Third party review of plans, if required, shall also be at the applicant's expense. The Director shall have the sole authority to determine whether the professional evaluation submitted by the applicant is adequate, the evaluator is qualified and acceptable to the City, and whether third party review of plans is necessary. Required professional evaluation(s) and services may include:

1. Providing a written evaluation of the anticipated effects of proposed construction on the viability of trees on a site;
2. Providing a hazardous tree assessment;
3. Developing plans for, supervising, and/or monitoring implementation of any required tree protection or replacement measures; and/or
4. Conducting a post-construction site inspection and evaluation.

C. **Conditions of Approval.** The Director may specify conditions for work at any stage of the application or project as he/she deems necessary to ensure the proposal's compliance with requirements of this subchapter, critical area standards, engineering standards, the adopted stormwater management regulations, and any other section of the Shoreline Development Code, or to protect public or private property. These conditions may include, but are not limited to hours or seasons within which work may be conducted, or specific work methods.

D. **Designation of Protected Trees.**

1. For the following areas, the retention and planting plan and any application and permit plans shall show all trees designated for protection: areas designated as "protected trees," "native growth protection areas," "sensitive areas," "sensitive area buffers," or such other designation as may be approved by the Director. Protected vegetation, including protected trees, shall not be modified, harmed or removed except as provided in this subchapter.

2. The Director may require that protected trees be permanently preserved within a tract, easement or other permanent protective mechanism. When required, the location, purpose, and limitation of these protected areas shall be shown on the face of the deed, plat, binding site plan, or similar document and shall be recorded with the King County Department of Records and Elections or its successor. The recorded document shall include the requirement that the protected areas shall not be removed, amended or modified without the written approval of the City.

E. **Preconstruction Meeting Required.** Prior to the commencement of any permitted clearing and grading activity, a preconstruction meeting shall be held on site with the permittee and appropriate City staff. The project site shall be marked in the field as follows:

1. The extent of clearing and grading to occur;
2. Delineation of any critical areas and critical area buffers;
3. Trees to be removed and retained; and
4. Property lines. (Ord. 238 Ch. V § 5(E), 2000).

20.50.340 Basic operating conditions and standards of performance.

- A. Any activity that will clear, grade or otherwise disturb the site, whether requiring a clearing or grading permit or not, shall provide erosion and sediment control (ESC) that prevents, to the maximum extent possible, the transport of sediment from the site to drainage facilities, water resources and adjacent properties. Erosion and sediment controls shall be applied as specified by the temporary ESC measures and performance

criteria and implementation requirements in the adopted stormwater management design manual.

B. Cuts and fills shall conform to the following provisions unless otherwise approved by the Director:

1. **Slope.** No slope of cut and fill surfaces shall be steeper than is safe for the intended use and shall not exceed two horizontal to one vertical, unless otherwise approved by the Director.

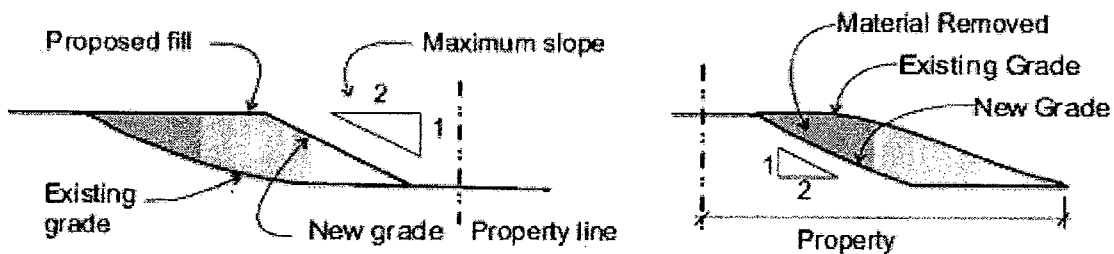


Figure 20.50.340(B): Illustration of fill and cut with maximum slope 2:1.

2. **Erosion Control.** All disturbed areas including faces of cuts and fill slopes shall be prepared and maintained to control erosion in compliance with the Surface Water Design Manual.
3. **preparation of Ground.** The ground surface shall be prepared to receive fill by removing unsuitable material such as concrete slabs, tree stumps, construction materials, brush and other debris.
4. **Fill Material.** Detrimental amounts of organic material shall not be permitted in fills. Only earth materials which have no rock or similar irreducible material with a maximum dimension greater than 12 inches shall be used. In the absence of an approved soils engineering report, these

provisions may be waved by the Director for minor fills not intended to support structures.

5. Drainage. Provisions shall be made to:

- a. Prevent any surface water or seepage from damaging the cut face of any excavations or the sloping face of a fill;
- b. Carry any surface waters that are or might be concentrated as a result of a fill or excavation to a natural watercourse, or by other means approved by the department of public works;

6. Bench/Terrace. Benches, if required, at least 10 feet in width shall be back-sloped and shall be established at not more than 25 feet vertical intervals to control surface drainage and debris. Swales or ditches on benches shall have a maximum gradient of five percent.

7. Setbacks. The tops and the toes of cut and fill slopes shall be set back from property boundaries as far as necessary for safety of the adjacent properties and to prevent damage resulting from water runoff or erosion of the slopes. The tops and the toes of cut and fill slopes shall be set back from structures as far as is necessary for adequacy of foundation support and to prevent damage as a result of water runoff or erosion of the slopes. Slopes and setbacks shall be determined by the Director.

C. Access Roads – Maintenance. Access roads to grading sites shall be maintained and located

to the satisfaction of the Director to minimize problems of dust, mud and traffic circulation.

D. Access Roads – Gate. Access roads to grading sites shall be controlled by a gate when required by the Director.

E. Warning Signs. Signs warning of hazardous conditions, if such exist, shall be affixed at locations as required by the Director.

F. Temporary Fencing. Temporary fencing, where required by the Director, to protect life, limb and property, shall be installed. Specific fencing requirements shall be determined by the Director.

G. Hours of Operation. Hours of operation for tree cutting, clearing and grading, unless otherwise authorized by the Director, shall be between 7:00 a.m. and 7:00 p.m. weekdays and 9:00 a.m. to 9:00 p.m. on Saturdays and Sundays. Additionally, tree cutting (felling) shall further be limited to daylight hours.

H. Traffic Control and Haul Plan. The applicant shall be required to submit a plan detailing traffic control and proposed timing, volume, and routing of trucks and equipment as determined to be necessary by the Director. (Ord. 238 Ch. V § 5(F), 2000).

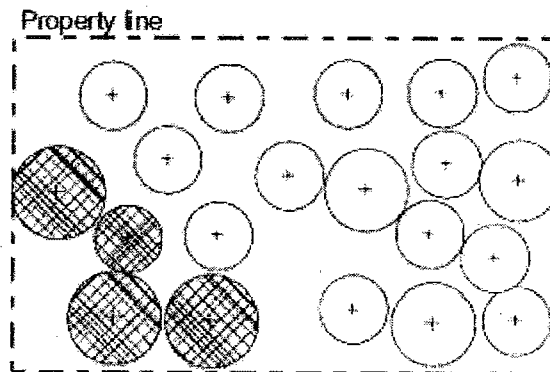
20.50.350 Development standards for clearing activities.

A. No trees or ground cover shall be removed from critical area or buffer unless the proposed activity is consistent with the critical area standards.

B. Minimum Retention Requirements. All proposed development activities that are not exempt from

the provisions of this subchapter shall meet the following:

1. At least 20 percent of the significant trees on a given site shall be retained, excluding critical areas, and critical area buffers, or
2. At least 30 percent of the significant trees on a given site (which may include critical areas and critical area buffers) shall be retained.
3. The Director may require the retention of additional trees to meet the stated purpose and intent of this ordinance, as required by the critical areas standards, or as site-specific conditions demand using SEPA substantive authority.



LEGEND

⊗ Indicates trees to be retained

Figure 20.50.350(B)(1): Demonstration of the retention of 20 percent of the significant trees on a site containing no critical areas.

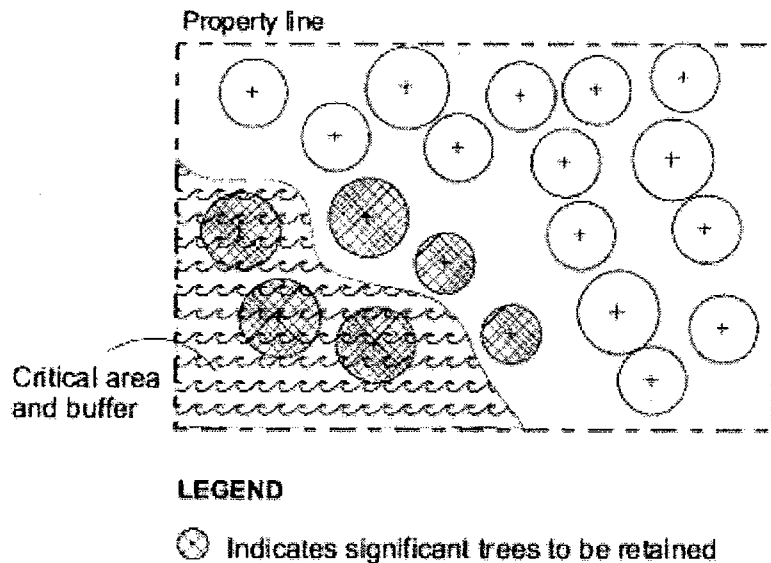


Figure 20.50.350(B)(2): Demonstration of the retention of 30 percent of the significant trees on a site containing a critical area.

Exception 20.50.350(B):

1. *The Director may allow a reduction in the minimum significant tree retention percentage to facilitate preservation of a greater number of smaller trees, a cluster or grove of trees, contiguous perimeter buffers, distinctive skyline features, or based on the City's concurrence with a written recommendation of an arborist certified by the International Society of Arboriculture and approved by the City that retention of the minimum percentage of trees is not advisable on an individual site.*
2. *In addition, the Director may allow a reduction in the minimum significant tree retention percentage if all of the following criteria are satisfied: The exception is necessary because:*

There are special circumstances related to the size, shape, topography, location or surroundings of the subject property.

Strict compliance with the provisions of this Code may jeopardize reasonable use of property.

Proposed vegetation removal, replacement, and any mitigation measures are consistent with the purpose and intent of the regulations.

The granting of the exception or standard reduction will not be detrimental to the public welfare or injurious to other property in the vicinity.

3. If an exception is granted to this standard, the applicant shall still be required to meet the basic tree replacement standards identified in SMC 20.50.360 for all significant trees removed beyond the six allowed per parcel without replacement and up to the maximum that would ordinarily be allowed under SMC 20.50.350(B).

4. In addition, the applicant shall be required to plant four trees for each significant tree removed that would otherwise count towards the minimum retention percentage. Trees replaced under this provision shall be at least 12 feet high for conifers and three inches in caliper if otherwise. This provision may be waived by the Director for restoration enhancement projects conducted under an approved vegetation management plan.

C. Incentives for Higher Levels of Tree Protection. The Director may grant reductions or adjustments to other site development standards if the protection levels identified in subsection (B) of this section above are exceeded. On a case by case review, the Director shall determine the balance between tree protection that exceeds the established minimum percentage and variations to site development requirements. If the Director

grants adjustments or reductions to site development standards under this provision, then tree protection requirements shall be recorded on the face of the plat, as a notice to title, or on some other legal document that runs with the property. Adjustments that may be considered are:

1. Reductions or variations of the area, width, or composition of required open space and/or landscaping;
2. Variations in parking lot design and/or and access driveway requirements;
3. Variations in building setback requirements;
4. Variations of grading and stormwater requirements.

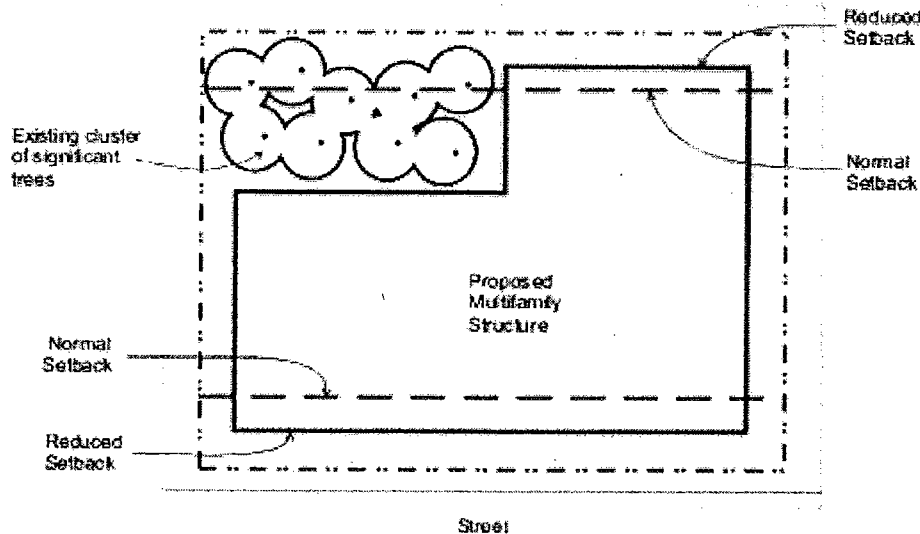


Figure 20.50.350(C): Example of aggregate setback to preserve a cluster of significant trees.

D. Site Design. Site improvements shall be designed and constructed to meet the following:

1. Trees should be protected within vegetated islands and stands rather than as individual, isolated trees scattered throughout the site.
2. Site improvements shall be designed to give priority to protection of trees with the following characteristics, functions, or location:

Existing stands of healthy trees that have a reasonable chance of survival once the site is developed, are well shaped to withstand the wind and maintain stability over the long term, and will not pose a threat to life or property;

Trees which exceed 50 feet in height.

Trees and tree clusters which form a continuous canopy.

Trees that create a distinctive skyline feature.

Trees that have a screening function or provide relief from glare, blight, commercial or industrial harshness;

Trees providing habitat value, particularly riparian habitat;

Trees within the required yard setbacks or around the perimeter of the proposed development;

Trees having a significant land stability function;

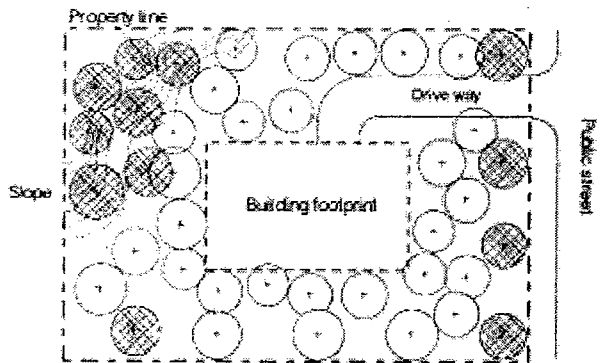
Trees adjacent to public parks, open space, and sensitive area buffers.

Trees having a significant water-retention function, such as cottonwoods.



3. Building footprints, parking areas, roadways, utility corridors and other structures shall be designed and located with a consideration of tree protection opportunities.
4. The project grading plans shall accommodate existing trees and avoid alteration to grades around existing significant trees to be retained.

5. Required open space and recreational space shall be designed and located to protect existing stands of trees.
6. The site design and landscape plans shall provide suitable locations and adequate area for replacement trees as required in SMC 20.50.370.
7. In considering trees for protection, the applicant shall avoid selecting trees that may become hazardous because of wind gusts, including trees adjacent to utility corridors where falling trees may cause power outages or other damage. Remaining trees may be susceptible to blow downs because of loss of a buffer from other trees, grade changes affecting the tree health and stability and/or the presence of buildings in close proximity.
8. If significant trees have been removed from a closed, forested situation, an adequate buffer of smaller trees shall be retained or planted on the fringe of such significant trees as determined by a certified arborist.
9. All trees located outside of identified building footprints and driveways and at least 10 feet from proposed structures shall be considered as eligible for preservation. However, all significant trees on a site shall be considered when calculating the minimum retention percentage.

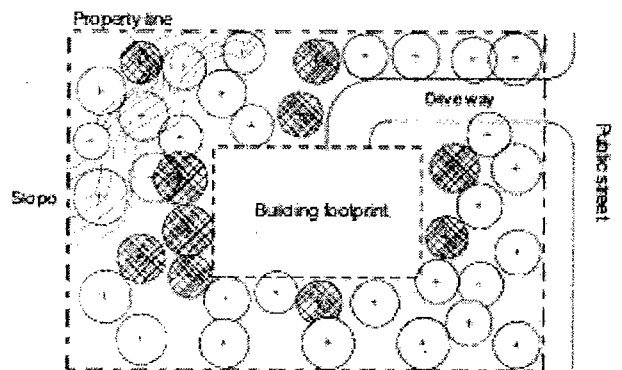
DO THIS



LEGEND

-  Appropriately retained trees - in clusters on a slope and along the street
-  Trees proposed for removal

DON'T DO THIS



LEGEND



-  Inappropriately retained trees - too close to the building and/or scattered single trees
-  Trees proposed for removal

Figure 20.50.350(D): Example of the application of tree retention site design standards. Appropriate retention of a cluster of trees on a slope and frontage trees are shown above. Inappropriate retention of scattered single trees and trees near structures are shown below.

- E. **Cutting and Pruning of Protected Trees.** Trees protected under the provisions of this section shall not be topped. Pruning and maintenance of protected trees shall be consistent with best management practices in the field of arboriculture and further the long-term health of the tree. Excessive pruning, including topping, stripping, or imbalances, shall not be allowed unless necessary to protect life and property.

The last sentence is expanded to make the term "excessive pruning" clearer.

- F. **Landmark Trees.** Trees which have been designated as landmark trees by the City of Shoreline because they are 30 inches or larger in diameter or particularly impressive or unusual due to species, size, shape, age, historical significance and/or is an outstanding row or group of trees, has become a landmark to the City of Shoreline or is considered a specimen of its species shall not be removed unless the applicant meets the exception requirements of subsection (B) of this section. The Director shall establish criteria and procedures for the designation of landmark trees. (Ord. 238 Ch. V § 5(G), 2000).

20.50.360 Tree replacement and site restoration.

- A. **Plans Required.** Prior to any tree removal, the applicant shall demonstrate through a clearing and grading plan, tree retention and planting plan, landscape plan, critical area protection and mitigation plan, or other plans acceptable to the Director that tree replacement will meet the minimum standards of this section. Plans shall be prepared by a qualified person or persons at the applicant's expense. Third party review of plans, if required, shall be at the applicant's expense.
- B. The City may require the applicant to relocate or replace trees, shrubs, and ground covers, provide erosion control methods, hydro seed exposed slopes, or otherwise protect and restore the site as determined by the Director or designee.

C. Replacement Required. Up to six significant trees and associated vegetation may be removed per parcel with no replacement of trees required. Any significant tree proposed for removal beyond this limit should be replaced as follows:

1. One existing significant tree of eight inches in diameter at breast height for conifers or 12 inches in diameter at breast height for all others equals one new tree.
2. Each additional three inches in diameter at breast height equals one additional new tree, up to three trees per significant tree removed.
3. Minimum size requirements for trees replaced under this provision: deciduous trees shall be at least 1.5 inches in caliper and evergreens six feet in height.

Exception 20.50.360(C):

1. ~~No tree replacement is required in the following cases: when~~
~~The tree is hazardous, dead, diseased, injured or in a declining condition with no reasonable assurance of remaining vigor.~~
The tree is proposed for relocation to another suitable planting site; provided, that relocation complies with the standards of this section.
2. The Director may allow a reduction in the minimum replacement trees required or off-site planting of replacement trees if all of the following criteria are satisfied:
There are special circumstances related to the size, shape, topography, location or surroundings of the subject property.
Strict compliance with the provisions of this Code may jeopardize reasonable use of property.

The tree replacement exception for hazardous trees is removed so that replanting would be required. The general provisions allowing up to six trees (hazardous or not) to be removed without replacement would continue to apply.

Proposed vegetation removal, replacement, and any mitigation measures are consistent with the purpose and intent of the regulations.

The granting of the exception or standard reduction will not be detrimental to the public welfare or injurious to other property in the vicinity.

3. *The Director may waive this provision for site restoration or enhancement projects conducted under an approved vegetation management plan.*

- D. The Director may require that a portion of the replacement trees be native species in order to restore or enhance the site to predevelopment character.
- E. The condition of replacement trees shall meet or exceed current American Nursery and Landscape Association or equivalent organization's standards for nursery stock.
- F. Replacement of removed trees with appropriate native trees at a ratio determined by the Director will be required in critical areas.
- G. The Director may consider smaller-sized replacement plants if the applicant can demonstrate that smaller plants are more suited to the species, site conditions, and to the purposes of this subchapter, and are planted in sufficient quantities to meet the intent of this subchapter.
- H. All required replacement trees and relocated trees shown on an approved permit shall be maintained in healthy condition by the property owner throughout the life of the project, unless otherwise approved by the Director in a subsequent permit.

I. Where development activity has occurred that does not comply with the requirements of this subchapter, the requirements of any other section of the Shoreline Development Code, or approved permit conditions, the Director may require the site to be restored to as near preproject original condition as possible. Such restoration shall be determined by the Director and may include, but shall not be limited to, the following:

1. Filling, stabilizing and landscaping with vegetation similar to that which was removed, cut or filled;
2. Planting and maintenance of trees of a size and number that will reasonably assure survival and that replace functions and values of removed trees; and
3. Reseeding and landscaping with vegetation similar to that which was removed, in areas without significant trees where bare ground exists.

J. Significant trees which would otherwise be retained, but which were unlawfully removed or damaged or destroyed through some fault of the applicant or their representatives shall be replaced in a manner determined by the Director.

K. **Performance Assurance.** A performance bond or other acceptable security device to ensure the installation, maintenance and adequate performance of tree retention, replacement, and protection measures may be required in an amount determined by the Director.

L. **Monitoring.** The Director may require submittal of periodic monitoring reports as necessary to ensure survival of replacement trees. The

contents of the monitoring report shall be determined by the Director.

M. Discovery of Undocumented Critical Areas.

The Director may stop work authorized by a clearing and grading permit if previously undocumented critical areas are discovered on the site. The Director has the authority to require additional studies, plans and mitigations should previously undocumented critical areas be found on a site. (Ord. 299 § 1, 2002; Ord. 238 Ch. V § 5(H), 2000).

20.50.370 Tree protection standards.

The following protection measure shall be imposed for all trees to be retained on-site during the construction process.

- A. All required tree protection measures shall be shown on the tree protection and replacement plan, clearing and grading plan, or other plan submitted to meet the requirements of this subchapter.
- B. Tree dripline areas shall be protected. No fill, excavation, construction materials, or equipment staging or traffic shall be allowed in the dripline areas of trees that are to be retained.
- C. Prior to any land disturbance, temporary construction fences must be placed around the dripline of trees to be preserved. If a cluster of trees is proposed for retention the barrier shall be placed around the edge formed by the drip lines of the trees to be retained.
- D. Tree protection barriers shall be a minimum of four feet high, constructed of chain link, or polyethylene laminar safety fencing or similar material, subject to approval by the Director. "Tree Protection Area" signs shall be posted visibly on all sides of the fenced areas. On large

or multiple-project sites, the Director may also require that signs requesting subcontractor cooperation and compliance with tree protection standards be posted at site entrances.

- E. Where tree protection areas are remote from areas of land disturbance, and where approved by the Director, alternative forms of tree protection may be used in lieu of tree protection barriers; provided, that protected trees are completely surrounded with continuous rope or flagging and are accompanied by "Tree Leave Area – Keep Out" signs.
- F. Rock walls shall be constructed around the tree, equal to the dripline, when existing grade levels are lowered or raised by the proposed grading.
- G. Retain small trees, bushes and understory plants within the tree protection zone to the maximum extent practicable.
- H. **Preventative Measures.** In addition to the above minimum tree protection measures, the applicant should support tree protection efforts by employing, as appropriate, the following preventative measures, consistent with best management practices for maintaining the health of the tree:
 - 1. Pruning of visible deadwood on trees to be protected or relocated;
 - 2. Application of fertilizer to enhance the vigor of stressed trees;
 - 3. Use of soil amendments and soil aeration in tree protection and planting areas;
 - 4. Mulching over tree drip line areas; and

5. Ensuring proper watering during and immediately after construction and throughout the first growing season after construction.

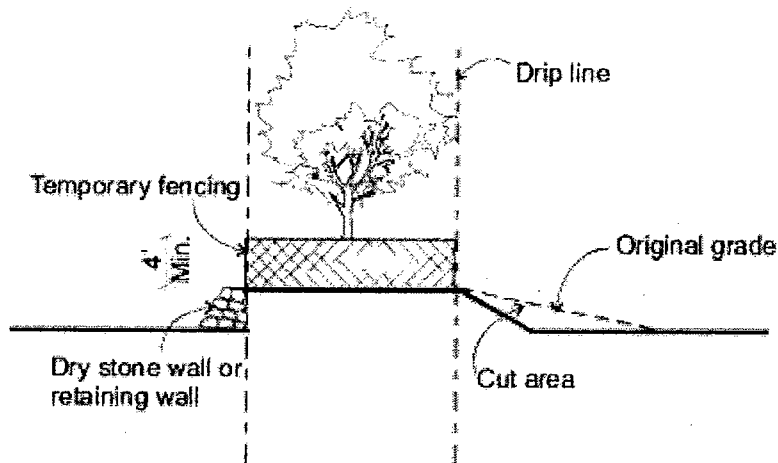


Figure 20.50.370:
Illustration of standard
techniques used to protect
trees during construction.

Exception 20.50.370:

The Director may waive certain protection requirements, allow alternative methods, or require additional protection measures based on concurrence with the recommendation of a certified arborist deemed acceptable to the City. (Ord. 238 Ch. V § 5(I), 2000).

Chapter 20.80 Critical Areas

Sections:

Subchapter 1. Critical Areas – General Provisions

- 20.80.010 Purpose.
- 20.80.020 Critical areas maps.
- 20.80.025 Applicability.
- 20.80.030 Exemptions.
- 20.80.040 Partial exemptions.
- 20.80.045 Relationship to other regulations.
- 20.80.050 Notice to title.
- 20.80.060 Permanent field marking.
- 20.80.070 Alteration of critical areas.
- 20.80.080 Alteration or development of critical areas –
Standards and criteria.
- 20.80.090 Buffer areas.
- 20.80.100 Classification and rating of critical areas.

Subchapter 2. Geologic Hazard Areas

- 20.80.210 Description and purpose.
- 20.80.220 Classification.
- 20.80.230 Required buffer areas.
- 20.80.240 Alteration.
- 20.80.250 Mitigation performance standards and
requirements.

Subchapter 3. Fish and Wildlife Habitat Conservation Areas

- 20.80.260 Description and purpose.
- 20.80.270 Classification.
- 20.80.280 Required buffer areas.
- 20.80.290 Alteration.
- 20.80.300 Mitigation performance standards and
requirements.

Subchapter 4. Wetlands

- 20.80.310 Description and purpose.
- 20.80.320 Classification.
- 20.80.330 Required buffer areas.

- 20.80.340 Alteration.
- 20.80.350 Mitigation performance standards and requirements.

Subchapter 5. Flood Hazard Areas

- 20.80.360 Description and purpose.
- 20.80.370 Classification.
- 20.80.380 Flood fringe – Development standards and permitted alterations.
- 20.80.390 Zero-rise floodway – Development standards and permitted alterations.
- 20.80.400 FEMA floodway – Development standards and permitted alterations.
- 20.80.410 Flood hazard areas – Certification by engineer or surveyor.

Subchapter 6. Aquifer Recharge Areas

- 20.80.420 Description and purpose.
- 20.80.430 Classification.
- 20.80.440 Alteration.
- 20.80.450 Performance standards and requirements.

Subchapter 7. Stream Areas

- 20.80.460 Description and purpose.
- 20.80.470 Classification.
- 20.80.480 Required buffer areas.
- 20.80.490 Alteration.
- 20.80.500 Mitigation performance standards and requirements.

20.80.010 Purpose.

- A. The purpose of this chapter is to establish supplemental standards for the protection of critical areas in compliance with the provisions of the Washington Growth Management Act of 1990 (Chapter 36.70A RCW) and consistent with the goals and policies of the Shoreline Comprehensive Plan in accordance with the procedures of Chapter 20.30 SMC.
- B. By identifying and regulating development and alterations to critical areas and their buffers, it is the intent of this chapter to:

1. Protect the public from injury, loss of life, property damage or financial losses due to flooding, erosion, landslide, seismic events, soils subsidence or steep slope failure;
2. Protect unique, fragile and valuable elements of the environment;
3. Reduce cumulative adverse environmental impacts to water quality, wetlands, streams and other aquatic resources, fish and wildlife habitat, steep slopes and geologically unstable features;
4. Meet the requirements of the National Flood Insurance Program and maintain the City of Shoreline as an eligible community for Federal flood insurance benefits;
5. Ensure the long-term protection of ground and surface water quality;
6. Alert members of the public, including appraisers, assessors, owners, potential buyers, or lessees, to the development limitations of critical areas and their required buffers;
7. Serve as a basis for exercise of the City's substantive authority under the State Environmental Policy Act (SEPA) and the City's Environmental Procedures (Chapter 20.30 SMC, Subchapter 8); and comply with the requirements of the Growth Management Act (Chapter 36.70A RCW) and its implementing rules;
8. Establish standards and procedures that are intended to protect environmentally critical areas while accommodating the rights of

property owners to use their property in a reasonable manner; and

9. Provide for the management of critical areas to maintain their functions and values and to restore degraded ecosystems. (Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 1(A), 2000).

20.80.020 Critical areas maps.

- A. The approximate location and extent of identified critical areas within the City's planning area are shown on the critical areas maps adopted as part of this chapter. These maps shall be used for informational purposes only to assist property owners and other interested parties. Boundaries and locations indicated on the maps are generalized. Critical areas and their buffers may occur within the City which have not previously been mapped.
- B. The actual presence or absence, type, extent, boundaries, and classification of critical areas shall be identified in the field by a qualified professional, and determined by the City, according to the procedures, definitions and criteria established by this chapter. In the event of any conflict between the critical area location or designation shown on the City's maps and the criteria or standards of this chapter, the criteria and standards shall prevail.
- C. The critical areas maps shall be periodically updated by the City and shall reflect any permit activity, results of special studies and reports reviewed and approved by the City, amendments to the Comprehensive Plan Environmental Element and Department identified errors and corrections. (Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 1(D), 2000. Formerly 20.80.040.).

20.80.025 Applicability.

- A. Unless explicitly exempted, the provisions of this chapter shall apply to all land uses and within all zoning designation in the City of Shoreline. All persons within the City shall comply with the requirements of this chapter.
- B. The City shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water or vegetation or to construct or alter any structure or improvement without first assuring compliance with the requirements of this chapter.
- C. Approval of a development proposal pursuant to the provisions of this chapter does not discharge the obligation of the applicant to comply with the provisions of this chapter.
- D. ~~When any provisions of any other section of the City Code conflicts with this chapter or when the provisions of this chapter are in conflict, that provision which provides more protection to critical areas shall apply unless specifically provided otherwise in this chapter or unless such provision conflicts with Federal or State laws or regulations.~~
- E. The provisions of this chapter shall apply to any forest practices over which the City has jurisdiction pursuant to Chapter 76.09 RCW and WAC Title 222. (Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 1(E), 2000. Formerly 20.80.050.).

Subsection D is removed since it repeats SMC 20.80.045, which better addresses code conflicts.

20.80.030 Exemptions.

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

- A. Alterations in response to emergencies which threaten the public health, safety and welfare or which pose an imminent risk of damage to private property as long as any alteration undertaken pursuant to this subsection is reported to the City

as soon as possible. Only the minimum intervention necessary to reduce the risk to public health, safety, or welfare and/or the imminent risk of damage to private property shall be authorized by this exemption. The City shall confirm that an emergency exists and determine what, if any, additional applications and/or measures shall be required to protect the environment consistent with the provisions of this chapter, and to repair any damage to a preexisting resource;

- B. Public water, electric and natural gas distribution, public sewer collection, cable communications, telephone, utility and related activities undertaken pursuant to City-approved best management practices, and best available science with regard to protection of threatened and endangered species, as follows:
1. Normal and routine maintenance or repair of existing utility structures or rights-of-way;
 2. Relocation of electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less, only when required by the City of Shoreline, which approves the new location of the facilities;
 3. Replacement, operation, repair, modification or installation or construction in an improved City road right-of-way or City authorized private roadway of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less;
 4. Relocation of public sewer local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment or appurtenances, only when required by the

City of Shoreline, which approves the new location of the facilities; and

5. Replacement, operation, repair, modification, relocations, installation or construction of public sewer local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment or appurtenances when such facilities are located within an improved public right-of-way or City authorized private roadway.
- C. Maintenance, operation, repair, modification or replacement of publicly improved roadways and associated stormwater drainage systems as long as any such alteration does not involve the expansion of roadways or related improvements into previously unimproved rights-of-way or portions of rights-of-way;
- D. Maintenance, operation or repair of publicly improved recreation areas as long as any such activity does not involve the expansion of uses and/or facilities into a previously unimproved portion of a preexisting area. Maintenance, operation and repair of publicly improved recreation areas within designated fish and wildlife habitat areas shall be permitted if all activities are performed consistent with the development standards of this chapter, best available science or adaptive management plans as recognized by the City;
- ~~E. Activities involving artificially created wetlands or streams intentionally created from nonwetland sites, including but not limited to grass-lined swales, irrigation and drainage ditches, detention facilities and landscape features, except wetlands, streams or swales created as mitigation or that provide or contribute to critical habitat for salmonid fishes;~~

It is unnecessary and redundant to exempt activities in artificial wetlands in this section. The definition of wetlands excludes specific types of artificial wetlands.

F. Activities affecting isolated Type IV wetlands which are individually smaller than 1,000 square feet.

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

H. Minor conservation and enhancement of critical areas that does not alter the location, dimensions or size of the critical area or buffer, and results in improvement of the critical area functions.

I. Removal of hazardous trees in accordance with SMC 20.50.310(A)(1)

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

HL. 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;~~

JM. Normal and routine maintenance and operation of existing landscaping and gardens provided

Science supports preserving wetland functions, even when they are small. If an exemption is maintained for small wetlands it should be narrowed to only include those that are isolated and provide little function.

A new exemption is proposed to encourage conservation and enhancement activities, such as the planting of native vegetation.

A new exemption borrowed from King County critical areas regulations is proposed to facilitate removal of trees that pose a clear hazard to people and/or property.

The last portion of the subsection refers back to the tree conservation permitting requirements which may require the planting of replacement trees.

they comply with all other regulations in this chapter;

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

LO. Notwithstanding the exemptions provided by this section, any otherwise exempt activities occurring in or near a critical area should meet the purpose and intent of SMC 20.80.010 and should consider on-site alternatives that avoid or minimize impacts. (Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 1(G), 2000. Formerly 20.80.070.).

20.80.040 Partial exemptions.

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

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

not increase the existing footprint of the residence lying within the above-described buffer or building setback area by more than 750 square feet over that existing before November 27, 1990, and no portion of the modification, addition or replacement is located closer to the critical area or, if the existing residence is within the critical area, extend farther into the critical area; and

3. Maintenance or repair of structures which do not meet the development standards of this chapter for landslide or seismic areas if the maintenance or repair does not increase the footprint of the structure and there is no increased risk to life or property as a result of the proposed maintenance or repair.
- B. A permit or approval sought as part of a development proposal for which multiple permits are required is exempt from the provisions of this chapter, except for the notice to title provisions, as applicable if:
1. The City of Shoreline has previously reviewed all critical areas on the site; and
 2. There is no material change in the development proposal since the prior review; and
 3. There is no new information available which may alter previous critical area review of the site or a particular critical area; and
 4. The permit or approval under which the prior review was conducted has not expired or, if no expiration date, no more than five years have lapsed since the issuance of that permit or approval; and

5. The prior permit or approval, including any conditions, has been complied with. (Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 1(H), 2000. Formerly 20.80.080.).

20.80.045 Relationship to other regulations.

- A. These critical area regulations shall apply as an overlay and in addition to zoning, land use and other regulations established by the City of Shoreline. In the event of any conflict between these regulations and any other regulations of the City, the regulations which provide greater protection to the environmentally critical areas shall apply.
- B. Areas characterized by particular critical areas may also be subject to other regulations established by this chapter due to the overlap or multiple functions of some critical areas. Wetlands, for example, may be defined and regulated according to the provisions for fish and wildlife habitat conservation areas contained in this chapter, as well as provisions regulating wetlands. In the event of any conflict between regulations for particular critical areas in this chapter, the regulations which provide greater protection to environmentally critical areas shall apply. (Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 1(K), 2000. Formerly 20.80.110.).

20.80.050 Notice to title.

- A. To inform subsequent purchasers 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

In the notice on title provisions, the distinction between subsections A and B appears to create confusion. They both seem to be requiring the designation of critical areas tracts, although B limits it to just subdivisions and binding site plans and A appears to require tracts for all development. More common with other jurisdictions, is to require a notice on title (relatively simple) for all development, and the recording of tracts on where plat drawings are being recorded. These two sections are proposed to be revised in that manner.

for development by a public agency or public or private utility when:

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.~~

- B. Subdivisions, short subdivisions, development agreements, and binding site plans which include critical areas or their buffers shall establish a separate tract (a critical areas tract) as a permanent protective measure for wetlands, streams, fish and wildlife habitat, landslide hazard areas and their buffers. The plat or binding site plan for the project shall clearly depict the critical areas tract, and shall include all of the subject critical area and any required buffer, as well as additional lands, as determined by the developer. Restrictions to development within the critical area tract shall be clearly noted on the plat or plan. Restrictions shall be consistent with this chapter for the entire critical area tract, including any additional areas included voluntarily by the Developer. Should the critical area tract include several types of critical areas the developer may wish to establish separate critical areas tracts. (Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 1(M), 2000. Formerly 20.80.130.).

20.80.060 Permanent field marking.

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

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

- B. It is the responsibility of the landowner to maintain and replace if necessary all permanent field markings. (Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 1(N), 2000. Formerly 20.80.140.).

20.80.070 Alteration of critical areas.

Alteration of critical areas, including their established buffers, may only be permitted subject to the criteria in this chapter, and compliance with any Federal and/or State permits required. (Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 2(A), 2000. Formerly 20.80.160.).

20.80.080 Alteration 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:~~

SMC 20.80.080 is revised to make it clear that this sets up a mitigation framework and that mitigation and protection measures are specified in the subchapters for individual critical areas. "Enforcement" is added to bring in the same considerations when we abate or mitigate a violation.

- A. Avoiding the impact altogether by not taking a certain action or parts of actions;
- B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- D. Reducing or eliminating the impact over time through preservation and maintenance operations during the life of the action; and/or
- E. Compensating for the impact by replacing or providing substitute resources or environments. (Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 2(B), 2000. Formerly 20.80.170.).
- F. Monitoring the impact and taking appropriate corrective measures.

20.80.090 Buffer areas.

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

324 § 1, 2003; Ord. 238 Ch. VIII § 2(C), 2000. Formerly 20.80.180.).

20.80.100 Classification and rating of critical areas.

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

- A. Application of the criteria contained in these regulations;
- B. Consideration of the technical reports submitted by qualified professionals in connection with applications subject to these regulations; and
- C. Review of maps adopted pursuant to this chapter. (Ord. 324 § 1, 2003; Ord. 238 Ch. VIII § 2(E), 2000. Formerly 20.80.200.).

Subchapter 2. Geologic Hazard Areas

20.80.210 Description-Designation and purpose.

- A. Geologic hazard areas ~~include~~ are those lands that are affected by natural processes that make them susceptible to geologic events, such as landslides, seismic activity and severe erosion, especially bluff and ravine areas and steep slopes. Areas suseptible to one or more of the following types of hazards shall be designated as geologically hazardous areas:

The changes to SMC 20.80.210 are to explicitly designate those geologic hazard areas.

- 1. Erosion hazard;

2. Landslide hazard:

3. Seismic hazard:

- B. The primary purpose of geologic hazard area regulations is to avoid and minimize potential impacts to life and property from geologic hazards, conserve soil resources, and minimize structural damage relating to seismic hazards. This purpose shall be accomplished through appropriate levels of study and analysis, application of sound engineering principles, and regulation or limitation of land uses, including maintenance of existing native vegetation, regulation of clearing and grading activities, and control of stormwater. (Ord. 238 Ch. VIII § 3(A), 2000).

20.80.220 Classification.

Geologic hazard areas shall be classified according to the criteria in this section as follows:

- A. **Landslide Hazard Areas.** Landslide hazard areas are classified as "Class I", "Class II", "Class III" or "Class IV" as follows:

Low (class I) hazards – all areas in the City that are essentially flat – are removed to clarify that they are not regulated under this chapter.

- ~~1.~~ ~~Class I/Low Hazard:~~ Areas with slopes of less than ~~15~~ percent.
- ~~21.~~ ~~Class II/Moderate Hazard:~~ Areas with slopes between 15 percent and 40 percent and that are underlain by soils that consist largely of sand, gravel or glacial till.
- ~~32.~~ ~~Class III/High Hazard:~~ Areas with slopes between 15 percent and 40 percent that are underlain by soils consisting largely of silt and clay.

43. ~~Class IV~~Very High Hazard: Areas with slopes steeper than 15 percent with zones of emergent water (e.g., springs or ground water seepage), areas of landslide deposits regardless of slope, and all steep slope hazard areas sloping 40 percent or steeper.

B. **Seismic Hazard Areas.** Seismic hazard areas are lands that, due to a combination of soil and ground water conditions, are subject to severe risk of ground shaking, subsidence or liquefaction of soils during earthquakes. These areas are typically underlain by soft or loose saturated soils (such as alluvium) and have a shallow ground water table.

C. **Erosion and Sedimentation Hazards.** Erosion hazard areas are lands or areas underlain by soils identified by the U.S. Department of Agriculture Natural Resources Conservation Service (formerly the Soil Conservation Service) as having "severe" or "very severe" erosion hazards. This includes, but is not limited to, the following group of soils when they occur on slopes of 15 percent or greater: Alderwood-Kitsap (AkF), Alderwood gravely sandy loam (AgD), Kitsap silt loam (KpD), Everett (EvD) and Indianola (InD).

D. **Steep Slopes.** ~~Steep slopes are those areas sloping 40 percent or steeper.~~

Steep slopes are included as Very High Landslide Hazards so it is unnecessary to repeat them here.

(Ord. 238 Ch. VIII § 3(B), 2000).

20.80.230 Required buffer areas.

A. Required buffer widths for geologic hazard areas shall reflect the sensitivity of the hazard area and the risks associated with development and, in those circumstances permitted by these regulations, the type and intensity of human activity and site design proposed to be conducted on or near the area. ~~Buffers or setbacks shall be~~

Buffer requirements are spelled out in subsection C, below.

~~measured from the top and toe of the slope and along the sides of the slope.~~

- B. In determining the appropriate buffer width, the City shall consider the recommendations contained in ~~any technical~~ a geotechnical report required by these regulations and prepared by a qualified consultant.

- C. For landslide hazard areas, the standard buffer shall be 50 feet from all edges of the landslide hazard area. Larger buffers may be required as needed to eliminate or minimize the risk to people and property based on a geotechnical report prepared by a qualified professional.

- ~~GD. Landslide hazard area B~~ buffers may be reduced to a minimum of 15 feet when technical studies conclusively demonstrate that the reduction will not increase the risk of the hazard to people or property on or off site, adequately protect the proposed and surrounding development from the critical landslide hazard.

Subsection C is proposed to provide a specific buffer distance for landslide hazards. Review of science indicates that landslide hazards should be avoided or mitigated through engineering. While science does not provide a specific buffer distance, a 50-foot buffer is commonly required by other jurisdictions as a standard to prevent impacts in most situations. The regulations are also changed to apply the buffer to the sides of the hazard, in addition to top and toe of slope, to acknowledge that all areas adjacent to hazards are at risk.

- ~~DE. Critical I~~ Landslide hazard areas and their associated buffers shall be placed either in a separate tract on which development is prohibited, protected by execution of an easement, dedicated to a conservation organization or land trust, or similarly preserved through a permanent protective mechanism acceptable to the City. The location and limitations associated with the critical landslide hazard and its buffer 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 and Elections. (Ord. 238 Ch. VIII § 3(C), 2000).

20.80.240 Alteration.

- A. The City shall approve, condition or deny proposals in a geologic hazard area as

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

B. ~~Class IV~~Very High Landslide Hazard Areas.

Development shall be prohibited in ~~Class IV (very high)~~ landslide hazards areas or their buffers except as granted by a critical areas special use permit or a critical areas reasonable use permit.

The class numbering provides little value. Therefore it is proposed to use the descriptive names – “Very High” and “Moderate and High” for the hazard areas.

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

The geotechnical engineer and/or geologist preparing the report shall provide assurances that the risk of damage from the proposal, both on-site and off-site, are minimal subject to the conditions set forth in the report, that the proposal will not increase the risk of occurrence of the potential landslide hazard, and that measures to eliminate or reduce risks have been incorporated into the report's recommendations.

Requirements of the geotechnical report in subsection F have been incorporated into the landslide hazard section.

D. Critical Seismic Hazard Areas.

The code regulates all seismic hazard areas, so the qualifier "critical" is unnecessary.

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

E. Erosion Hazard Areas.

1. Up to 1,500 square feet may be cleared on any lot in an erosion hazard area without a permit, unless the site also contains another type of critical area or any other threshold contained in SMC 20.50.320 would be exceeded.
2. All development proposals on sites containing erosion hazard areas shall include a temporary erosion and sediment control plan consistent with the requirements of the adopted surface water design manual and a revegetation plan to ensure permanent stabilization of the site. Specific requirements for revegetation plans shall be determined on a case-by-case basis during permit review and administrative guidelines shall be developed by the Department. Critical area revegetation plans may be combined with required landscape, tree retention, and/or other critical area mitigation plans as appropriate.

3. All subdivisions, short subdivisions or binding site plans on sites with erosion hazard areas shall comply with the following additional requirements:
 - a. Except as provided in this section, existing vegetation shall be retained on all lots until building permits are approved for development on individual lots;
 - b. If any vegetation on the lots is damaged or removed during construction of the subdivision infrastructure, the applicant shall be required to implement the revegetation plan in those areas that have been impacted prior to final inspection of the site development permit or the issuance of any building permit for the subject property;
 - c. Clearing of vegetation on individual lots may be allowed prior to building permit approval if the City of Shoreline determines that:
 - i. Such clearing is a necessary part of a large scale grading plan,
 - ii. It is not feasible to perform such grading on an individual lot basis, and
 - iii. Drainage from the graded area will meet water quality standards to be established by administrative rules.
4. Where the City of Shoreline determines that erosion from a development site poses a significant risk of damage to downstream receiving water, the applicant shall be required to provide regular monitoring of surface water discharge from the site. If the project does not meet water quality

standards established by law or administrative rules, the City may suspend further development work on the site until such standards are met.

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

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

- ~~1. A report from the geotechnical engineer and/or geologist who prepared the studies required by these regulations that the risk of damage from the proposal, both on site and off site, are minimal subject to the conditions set forth in the report, that the proposal will not increase the risk of occurrence of the potential geologic hazard, and that measures to eliminate or reduce risks have been incorporated into the report's recommendations; and~~
- ~~2. A legal statement which shall be recorded and noted on the face of the deed or plat, executed in a form satisfactory to the City, that characterizes the site as being located within a geologic hazard area, and states that there may or may not be risks associated with the development of the site.~~

Subsection 1 is proposed to be combined with subsection C for landslide hazard areas, above.

Subsection 2 is covered by the notice to title provisions of SMC 20.80.050.

Subsection 3 is added to the mitigation standards listed below in SMC 20.80.250.

~~In addition the provisions for permanent field marking (SMC 20.80.140) may apply; and~~

- ~~3. Posting of a bond, guarantee or other assurance device approved by the City to cover the cost of monitoring, maintenance and any necessary corrective actions. (Ord. 352 § 1, 2004; Ord. 324 § 1, 2003; Ord. 299 § 1, 2002; Ord. 238 Ch. VIII § 3(D), 2000).~~

20.80.250 Mitigation performance standards and requirements.

The following performance standards shall apply to any mitigations for development proposed within geologic hazard areas located within the City:

- A. Relevant performance standards from SMC 20.80.080, 20.80.300, 20.80.350 and 20.80.500 as determined by the City, shall be incorporated into mitigation plans.
- B. The following additional performance standards shall be reflected in proposals within geologic hazard areas:
 1. Geotechnical studies shall be prepared by a qualified consultant to identify and evaluate potential hazards and to formulate mitigation measures.
 2. Construction methods will reduce or not adversely affect geologic hazards.
 3. Site planning should minimize disruption of existing topography and natural vegetation.
 4. Impervious surface coverage should be minimized.

5. Disturbed areas should be replanted as soon as feasible pursuant to an approved landscape plan.
6. Clearing and grading regulations as set forth by the City shall be followed.
7. The use of retaining walls that allow maintenance of existing natural slope areas are preferred over graded slopes.
8. Temporary erosion and sedimentation controls, pursuant to an approved plan, shall be implemented during construction.
9. Undevelopable geologic hazard areas larger than one-half acre shall be placed in a separate tract, provided this requirement does not make the lot nonconforming.
10. A monitoring program shall be prepared for construction activities permitted in geologic hazard areas.
11. A bond, guarantee or other assurance device approved by the City shall be posted to cover the cost of monitoring, maintenance and any necessary corrective actions.
- ~~11~~12. Development shall not increase instability or create a hazard to the site or adjacent properties, or result in a significant increase in sedimentation or erosion. (Ord. 238 Ch. VIII § 3(E), 2000).

Borrowed from subsection F in SMC 20.80.240, above.

Subchapter 3. Fish and Wildlife Habitat Conservation Areas

20.80.260 Description Designation and purpose.

A. Fish and wildlife habitat conservation areas include nesting and breeding grounds for State and Federal threatened, endangered, critical or priority species as ~~identified~~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.

"Critical" added to be consistent with SMC 20.80.270. "Listed" added to clarify that it applies to species formally listed by the agencies.

B. The purpose of fish and wildlife habitat conservation areas shall be to provide opportunities for food, cover, nesting, breeding and movement for fish and wildlife within the City; maintain and promote diversity of species and habitat within the City; coordinate habitat protection with elements of the City's established open space corridors wherever possible; help to maintain air and water quality; control erosion; provide areas for recreation, education and scientific study and aesthetic appreciation; and contribute to the established character of the City.

C. The City of Shoreline has given special consideration to the identification and regulation of fish and wildlife habitat conservation areas that support anadromous fisheries in order to preserve and enhance species which are or may be listed as endangered, threatened or priority species by State and Federal agencies. (Ord. 238 Ch. VIII § 4(A), 2000).

20.80.270 Classification.

A. Fish and wildlife habitat conservation areas are those areas designated by the City based on review of the best available science; input from Washington Department of Fish and Wildlife, Washington Department of Ecology, and other agencies; and any of the following criteria,:

The classification of habitat areas is proposed to be revised to make it clear that these are areas the City designates and to include best available science and the state agencies in the designation process.

1. The presence of species proposed or listed by the Federal government or the State of Washington as endangered, threatened, critical, or priority; or

2. The presence of heron rookeries or priority raptor nesting trees; or

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

B. The City designates the following fish and wildlife habitat conservation areas that meet the above criteria, and this designation does not preclude designation of additional areas as provided in SCC 20.80.270(A):

1. All regulated streams and wetlands and their associated buffers as determined by a qualified specialist.

2. The waters, bed and shoreline of Puget Sound up to the ordinary high water mark.

Fish and wildlife habitat areas are those areas designated by the City based that meet on any of the following criteria, review of the best available science, and input from Washington Department of Fish and Wildlife, Washington Department of Ecology and other agencies:

A. The documented presence of species proposed or listed by the Federal government or State of Washington as endangered, threatened, critical, or priority documented by best available science; or

B. The presence of heron rookeries or priority raptor nesting trees; or

C. Type I wetlands, as defined in these regulations; or

D. Type I streams, as defined in these regulations; or

- ~~E. Those areas which include the presence of locally significant species, if the City has designated such species. (Ord. 238 Ch. VIII § 4(B), 2000).~~

20.80.280 Required buffer areas.

- A. Buffer widths for fish and wildlife habitat areas shall be based on consideration of the following factors: species specific recommendations of the Washington State Department of Wildlife; recommendations contained in a habitat management plan submitted by a qualified consultant; and the nature and intensity of land uses and activities occurring on the and adjacent to the site.
- B. Low impact uses and activities which are consistent with the purpose and function of the habitat buffer and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the habitat area. Examples of uses and activities which may be permitted in appropriate cases include trails that are pervious, viewing platforms, stormwater management facilities such as bio-swales, utility easements and other similar uses and activities; provided, that any impacts to the buffer resulting from such permitted facilities shall be fully mitigated.
- C. Fish and wildlife habitat conservation areas and their associated buffers shall be placed either in a separate tract on which development is prohibited, protected by execution of an easement, dedicated to a conservation organization or land trust, or similarly preserved through a permanent protective mechanism acceptable to the City. The location and limitations associated with the critical habitat and its buffer 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 and Elections. (Ord. 238 Ch. VIII § 4(C), 2000).

20.80.290 Alteration.

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

20.80.300 Mitigation performance standards and requirements.

- A. Relevant performance standards for other critical areas (such as wetlands and streams) that may be located within the fish and wildlife habitat conservation area, as determined by the City, shall be incorporated into mitigation plans.
- B. The following additional mitigation measures shall be reflected in fish and wildlife habitat conservation area mitigation planning:
 - 1. The maintenance and protection of habitat values shall be considered a priority in site planning and design.
 - 2. Buildings and structures shall be located in a manner that preserves and minimizes adverse impacts to important habitat areas. This may include clustering buildings and locating fences outside of habitat areas.
 - 3. Retained habitat shall be integrated into open space and landscaping.

4. Where possible, habitat and vegetated open space shall be consolidated in contiguous blocks.
5. Habitat shall be located contiguous to other habitat areas, open space or landscaped areas both on and off site to contribute to a continuous system or corridor that provides connections to adjacent habitat areas.
6. Native species shall be used in any landscaping of disturbed or undeveloped areas and in any enhancement of habitat or buffers.
7. The heterogeneity and structural diversity of vegetation shall be emphasized in landscaping.
8. Significant trees, preferably in groups, shall be preserved, consistent with the requirements of Chapter 20.50 SMC, Subchapter 5, Tree Conservation, Land Clearing and Site Grading, and with the objectives found in these standards. (Ord. 238 Ch. VIII § 4(E), 2000).

Subchapter 4. Wetlands

20.80.310 Description-Designation and purpose.

- A. Wetlands are those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the Washington State Wetlands Identification and Delineation Manual (Department of Ecology

Publication #96-94). Wetlands generally include swamps, marshes, bogs, and similar areas.

Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, bio-swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

The definition of wetlands is added to make it clear what areas are regulated by the following code sections. The definition is consistent with the GMA (RCW 36.70A.030(20)) definition of wetlands and eliminates the need for subsection E under Classification that attempts to address artificially created wetlands.

B. Wetlands help to maintain water quality; store and convey stormwater and floodwater; recharge ground water; provide important fish and wildlife habitat; and serve as areas for recreation, education, scientific study and aesthetic appreciation.

BC. The City's overall goal shall be to achieve no net loss of wetlands. This goal shall be implemented through retention of the function, value and acreage of wetlands within the City. Wetland buffers serve to moderate runoff volume and flow rates; reduce sediment, chemical nutrient and toxic pollutants; provide shading to maintain desirable water temperatures; provide habitat for wildlife; protect wetland resources from harmful intrusion; and generally preserve the ecological integrity of the wetland area.

CD. The primary purpose of the wetland regulations is to avoid detrimental wetland impacts and achieve a goal of no net loss of wetland function, value and acreage; and where possible enhance and restore wetlands. (Ord. 238 Ch. VIII § 5(A), 2000).

20.80.320 Classification.

Wetlands, as defined by this section, shall be designated ~~Type I, Type II, Type III, Type IV and artificial~~classified according to the following criteria:

A. "Type I wetlands" are those wetlands which meet any of the following criteria:

Revised to be consistent with SMC 20.80.260.

1. The presence of species proposed or listed by the Federal government or State of Washington as endangered, threatened, critical or ~~monitored~~priority, or the presence of critical or outstanding actual or potential habitat for those species; or
2. Wetlands having 40 percent to 60 percent open water in dispersed patches with two or more wetland subclasses of vegetation; or
3. High quality examples of a native wetland listed in the terrestrial and/or aquatic ecosystem elements of the Washington Natural Heritage Plan that are presently identified as such or are determined to be of Heritage quality by the Department of Natural Resources; or
4. The presence of plant associations of infrequent occurrence. These include, but are not limited to, plant associations found in bogs and in wetlands with a coniferous forested wetland class or subclass occurring on organic soils.

B. "Type II wetlands" are those wetlands which are not Type I wetlands and meet any of the following criteria:

1. Wetlands greater than one acre (43,560 sq. ft.) in size;

2. Wetlands equal to or less than one acre (43,560 sq. ft.) but greater than one-half acre (21,780 sq.ft.) in size and have three or more wetland classes; or
 3. Wetlands equal to or less than one acre (43,560 sq. ft.) but greater than one-half acre (21,780 sq.ft.) in size, and have a forested wetland class or subclasses.
- C. "Type III wetlands" are those wetlands that are equal to or less than one acre in size and that have one or two wetland classes and are not rated as Type IV wetlands, or wetlands less than one-half acre in size having either three wetlands classes or a forested wetland class or subclass.
- D. "Type IV wetlands" are those wetlands that are equal to or less than 2,500 square feet, hydrologically isolated and have only one, unforested, wetland class.
- ~~E. "Artificially created wetlands" are those landscape features, ponds and stormwater detention facilities purposefully or accidentally created. Artificially created wetlands do not include wetlands created as mitigation or wetlands modified for approved land use activities. Purposeful or accidental creation must be demonstrated to the City through documentation, photographs, statements or other evidence. Artificial wetlands intentionally created from nonwetland sites for the purposes of wetland mitigation are regulated under this subchapter. (Ord. 238 Ch. VIII § 5(B), 2000).~~

Artificially created wetlands are addressed by the definition of wetlands under GMA and as stated above.

20.80.330 Required buffer areas.

- A. Required wetland buffer widths shall reflect the sensitivity of the area and resource or the risks associated with development and, in those circumstances permitted by these regulations, the type and intensity of human activity and site

design proposed to be conducted on or near the critical area. Wetland buffers shall be measured from the wetland edge as delineated and marked in the field using the 1987 Department of Ecology Wetland Manual or adopted successor.

B. Wetland buffers shall be established as follows:

Table 20.80.330B

Wetland Type	Maximum Standard Buffer Width (ft)	Minimum Buffer Width (ft)
Type I	150	400 <u>115</u>
Type II	400 <u>115</u>	50 <u>75</u>
Type III	50 <u>65</u>	25 <u>35</u>
Type IV	40 <u>35</u>	40 <u>25</u>

Review of science indicates that larger buffers tend to provide greater protection and that very small buffers provide only minimal protective function. Therefore it is proposed to increase several of the buffers and to align them with the buffers for streams to increase consistency. Buffer distances are based in part on the WRIA 8 recommendations.

The following language is revised for clarity and to state that a reduced buffer must protect the wetland functions.

DC. 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:

1. The proposed use and/or activities are considered low impact, and may include the following:
 - a. A site layout with no parking, outdoor storage, or use of machinery;
 - b. The proposed use does not involve usage or storage of chemicals; and/or
 - c. Passive areas are located adjacent to the subject buffer; and/or

- d. Both the wetland and its buffer are incorporated into the site design in a manner which eliminates the risk of adverse impact on the subject critical area.

- 2. Wetland and buffer enhancement is implemented that will result in equal or greater wetland functions. This includes but is not limited to the following:

This revision is to state that mitigation must not only be provided, but must at least maintain the wetland functions to ensure that mitigation fully offsets impacts.

- a. Enhancement of fish and wildlife habitat by incorporating structures that are likely to be used by wildlife, including wood duck houses, bat boxes, nesting platforms, snags, rootwads/stumps, birdhouses, and heron nesting areas.
- b. Planting native vegetation that would increase value for fish and wildlife habitat, improve water quality, or provide aesthetic/recreational value.

- D. When a wetland has salmonid fish use consistent with SMC 20.80.470, the corresponding wetland or stream buffer, whichever is greater, shall be established.

Subsection D is proposed to ensure that a buffer protects fish habitat when such habitat is part of a wetland.

~~CE.~~ Applicants may choose to establish additional protections beyond the maximum. The City may extend the width of the buffer on the basis of site-specific analysis when necessary to achieve the goals of this subchapter.

The applicant's choice to expand protection is a given and not a regulation.

~~EE.~~ 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;~~

The subsection on wetland buffer averaging is outlined to make it easier to follow the specific criteria. The criteria are revised to be more in line with the code adopted by King County following best available science review. The "sensitivity" statement is rephrased at the end of the subsection to make it clearer how sensitivity relates to buffer averaging.

~~1. that width averaging will not adversely impact the wetland functional values~~The ecological structure and function of the buffer after averaging is equivalent to or greater than the structure and function before averaging;

~~2. and t~~That the total area contained within the buffer after averaging is no less than that contained within the standard buffer prior to averaging.

~~3. Buffer averaging shall~~will not result in a buffer width being reduced by more than 25 percent of the required buffer as set forth in Table 20.80.330B and in no case may the buffer be less than 40 feet in~~than the stated minimum width.~~

The City may require buffer averaging to be desgied to protect areas of greater sensitivity and function based on the recommendations of a wetland report prepared by a qualified professional.

F. Low impact uses and activities which are consistent with the purpose and function of the

wetland buffer and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the wetland. Examples of uses and activities which may be permitted in appropriate cases include trails constructed in a manner to reduce impervious surfaces, viewing platforms, and utility easements; provided, that any impacts to the buffer resulting from such permitted activities is fully mitigated. Uses permitted within the buffer shall be located as far from the wetland as possible.

- G. Stormwater management facilities, such as bio-swales, may not be located within the minimum buffer area as set forth in Table 20.80.330B unless it is determined that the location of the facility will enhance the buffer area, and protect the wetland.
- H. A regulated wetland and its associated buffer shall either be placed 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 wetland and its buffer 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. (Ord. 238 Ch. VIII § 5(C), 2000).

20.80.340 Alteration.

- A. **Type I Wetlands.** Alterations of Type I wetlands shall be prohibited subject to the reasonable use provisions and special use permit provision of this title.
- B. **Type II, III and IV Wetlands.**

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

20.80.350 Mitigation performance standards and requirements.

- A. Appropriate Wetland Mitigation Sequence and Actions.** Where impacts cannot be avoided, and the applicant has exhausted feasible design alternatives, the applicant or property owner shall seek to implement other appropriate mitigation actions in compliance with the intent, standards and criteria of this section. In an individual case, these actions may include consideration of alternative site plans and layouts, reductions in the density or scope of the proposal, and/or implementation of the performance standards listed in this subchapter.
- B. Impacts to wetland functions and values shall be mitigated.** Mitigation actions shall be implemented in the preferred sequence: Avoidance, minimization, restoration and replacement. Proposals which include less preferred and/or compensatory mitigation shall demonstrate that:
1. All feasible and reasonable measures will be taken to reduce impacts and losses to the critical area, or to avoid impacts where avoidance is required by these regulations; and

2. The restored, created or enhanced critical area or buffer will be as available and persistent as the critical area or buffer area it replaces; and
3. In the case of wetlands and streams, no overall net loss will occur in wetland or stream functions and values.

C. Location and Timing of Wetland Mitigation.

1. Wetland mitigation shall be provided on-site, unless on-site mitigation is not scientifically feasible due to the physical features of the property. The burden of proof shall be on the applicant to demonstrate that mitigation cannot be provided on-site.
2. When mitigation cannot be provided on-site, mitigation shall be provided in the immediate vicinity of the permitted activity on property owned or controlled by the applicant such as an easement, provided such mitigation is beneficial to the critical area and associated resources. It is the responsibility of the applicant to obtain title to off-site mitigation areas.
3. In-kind mitigation shall be provided except when the applicant demonstrates and the City concurs that greater functional and habitat value can be achieved through out-of-kind mitigation.
4. Only when it is determined by the City that subsections (C)(1), (2), and (3) of this section are inappropriate and impractical shall off-site, out-of-kind mitigation be considered.

5. When wetland mitigation is permitted by these regulations on-site or off-site, the mitigation project shall occur near an adequate water supply (river, stream, ground water) with a hydrologic connection to the proposed wetland mitigation area to ensure successful development or restoration.
6. Any agreed upon mitigation proposal shall be completed prior to project construction, unless a phased schedule that assures completion concurrent with project construction, has been approved by the City.
7. Wetland acreage replacement ratios shall be as specified in this section.
8. When wetland mitigation is permitted by these regulations, native plant materials salvaged from the original wetland area shall be utilized to the maximum extent possible.

D. Wetland Replacement Ratios.

1. Where wetland alterations are permitted by the City, the applicant shall restore or create areas of wetlands in order to compensate for wetland losses. Equivalent areas shall be determined according to acreage, function, type, location, timing factors and projected success of restoration or creation.
2. When creating or enhancing wetlands, the following acreage replacement ratios shall be used:

Table 20.80.350D

Wetland Type	Wetland Creation Replacement Ratio (Area)	Wetland Enhancement Ratio (Area)
Type I	6:1	216:1
Type II	23:1	412:1
Type III	2:1	48:1
Type IV	1_25:1	46:1

The wetland replacement and enhancement ratios are proposed to be increased consistent with Ecology's recommendations (publication 04-06-024, Appendix 8-C).

The Department shall have discretion to increase these standards where mitigation is to occur off-site or in other appropriate circumstances based on the recommendations of a wetlands report that includes best available science and is prepared by a qualified professional.

3. Enhanced wetlands shall have higher wetland values and functions than the altered wetland. The values and functions transferred shall be of equal or greater quality to assure no net loss of wetland values and functions.
4. Enhanced and created wetlands shall be appropriately classified and buffered.
5. An enhanced or created wetland and its associated buffer 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 and shall be recorded with the King County Department of Records.

E. Wetlands Performance Standards. The performance standards in this section shall be incorporated into mitigation plans submitted to the City for impacts to critical areas. In addition, the City may prepare a technical manual which includes guidelines and requirements for report preparation. The following performance standards shall apply to any mitigations proposed within Type I, Type II, Type III and Type IV wetlands and their buffers.

1. Plants indigenous to the region (not introduced or foreign species) shall be used.
2. Plant selection shall be consistent with the existing or projected hydrologic regime, including base water levels and stormwater event fluctuations.
3. Plants should be commercially available or available from local sources.
4. Plant species high in food and cover value for fish and wildlife shall be used.
5. Mostly perennial species should be planted.
6. Committing significant areas of the site to species that have questionable potential for successful establishment shall be avoided.
7. Plant selection must be approved by a qualified consultant.
8. The following standards shall apply to wetland design and construction:
 - a. Water depth shall not exceed six and one-half feet (two meters).

- b. The grade or slope that water flows through the wetland shall not exceed six percent.
 - c. Slopes within the wetland basin and the buffer zone shall not be steeper than 3:1 (horizontal to vertical).
 - d. The wetland (excluding the buffer area) should not contain more than 60 percent open water as measured at the seasonal high water mark.
- 9. Substrate should consist of a minimum of one foot, in depth, of clean (uncontaminated with chemicals or solid/hazardous wastes) inorganic/organic materials.
- 10. Planting densities and placement of plants should be determined by a qualified consultant and shown on the design plans.
- 11. The planting plan shall be approved by the City.
- 12. Stockpiling should be confined to upland areas and contract specifications should limit stockpiling of earthen materials to durations in accordance with City clearing and grading standards, unless otherwise approved by the City.
- 13. Planting instructions shall be submitted which describe proper placement, diversity, and spacing of seeds, tubers, bulbs, rhizomes, sprigs, plugs, and transplanted stock.
- 14. Controlled release fertilizer shall be applied (if required) at the time of planting and

afterward only as plant conditions warrant (determined during the monitoring process).

15. An irrigation system shall be installed, if necessary, for the initial establishment period.
16. All construction specifications and methods shall be approved by a qualified consultant and the City.
17. Construction management shall be provided by a qualified consultant. On-going work on-site shall be inspected by the City.

F. Approved Wetland Mitigation Projects – Signature. On completion of construction, any approved mitigation project shall be signed off by the applicant's qualified consultant and approved by the City. Signature of the qualified consultant and approval by the City will indicate that the construction has been completed as planned.

G. Monitoring Program and Contingency Plan.

1. A monitoring program shall be implemented by the applicant to determine the success of the mitigation project and any necessary corrective actions. This program shall determine if the original goals and objectives are being met.
2. A contingency plan shall be established for indemnity in the event that the mitigation project is inadequate or fails. A performance and maintenance bond or other acceptable security ~~device~~ financial guarantee is required to ensure the applicant's compliance with the terms of the mitigation agreement. The amount of the performance and maintenance bond shall equal 125

percent of the cost of the mitigation project for a minimum of five years. The bond may be reduced in proportion to work successfully completed over the period of the bond. The bonding period shall coincide with the monitoring period.

3. Monitoring programs prepared to comply with this section shall reflect the following guidelines:
 - a. Scientific procedures shall be used to establish the success or failure of the project.
 - b. For vegetation determinations, permanent sampling points shall be established.
 - c. Vegetative success shall, at a minimum, equal 80 percent survival of planted trees and shrubs and 80 percent cover of desirable understory or emergent plant species at the end of the required monitoring period. Additional standards for vegetative success, including (but not limited to) minimum survival standards following the first growing season, may be required after consideration of a report prepared by a qualified consultant.
 - d. Monitoring reports on the current status of the mitigation project shall be submitted to the City. The reports are to be prepared by a qualified consultant and reviewed by the City or a consultant retained by the City and should include monitoring information on wildlife, vegetation, water quality, water flow, stormwater storage and conveyance, and existing or potential degradation, as applicable, and shall be produced on the

following schedule: at the time of construction; 30 days after planting; early in the growing season of the first year; at the end of the growing season of the first year; twice during the second year; and annually thereafter.

- e. Monitoring programs shall be established for a minimum of five years.
- f. If necessary, failures in the mitigation project shall be corrected.
- g. Dead or undesirable vegetation shall be replaced with appropriate plantings.
- h. Damage caused by erosion, settling, or other geomorphological processes shall be repaired.
- i. The mitigation project shall be re-designed (if necessary) and the new design shall be implemented and monitored, as is subsection (G)(3)(d) of this section.
- j. Correction procedures shall be approved by a qualified consultant and the City. (Ord. 238 Ch. VIII § 5(E), 2000).

Subchapter 5. Flood Hazard Areas

20.80.360 Description and purpose.

- A. A flood hazard area consists of the following components: floodplain; flood fringe; zero-rise floodway; and Federal Emergency Management Agency (FEMA) floodway.

B. It is the purpose of these regulations to ensure that the City of Shoreline meets the requirements of the National Flood Insurance Program and maintains the City as an eligible community for Federal flood insurance benefits. (Ord. 238 Ch. VIII § 6(A), 2000).

C. A tsunami hazard area may be designated as a flood hazard area by the Federal or State Government.

20.80.370 Classification.

Flood hazard areas shall be determined after obtaining, reviewing and utilizing base flood elevations and available floodway data for a flood having a one percent chance of being equaled or exceeded in any given year, often referred to as the "100-year flood." The base flood is determined for existing conditions, and is shown on Flood Insurance Rate Maps for King County (FIRM) and incorporated areas, current version; or mapped on the King County Sensitive Areas Folio, unless a more complete basin plan including projected flows under future developed conditions has been completed and adopted by the City of Shoreline, in which case these future flow projections shall be used. In areas where the flood insurance study for the City includes detailed base flood calculations, those calculations may be used. (Ord. 238 Ch. VIII § 6(B), 2000).

20.80.380 Flood fringe – Development standards and permitted alterations.

A. Development proposals shall not reduce the effective base flood storage volume of the floodplain. Grading or other activity which would reduce the effective storage volume shall be mitigated by creating compensatory storage on the site or off the site if legal arrangements can be made to assure that the effective compensatory storage volume will be preserved over time.

- B. No structure shall be allowed which would be at risk due to stream bank destabilization including, but not limited to, that associated with channel relocation or meandering.
- C. All elevated construction shall be designed and certified by a professional structural engineer licensed by the State of Washington and the design shall be approved by the City prior to construction.
- D. Subdivisions, short subdivisions, lot line adjustments and binding site plans shall meet the following requirements:
1. New building lots shall contain no less than 5,000 square feet of buildable land outside the zero-rise floodway, and building setback areas shall be shown on the face of the plat to restrict permanent structures to this buildable area;
 2. All utilities and facilities such as stormwater facilities, sewer, gas, electrical and water systems shall be located and constructed consistent with the standards and requirements of this section;
 3. Base flood data and flood hazard notes shall be shown on the face of the recorded subdivision, short subdivision, lot line adjustment or binding site plan including, but not limited to, the base flood elevation, required flood protection elevations and the boundaries of the floodplain and the zero-rise floodway, if determined; and
 4. The following notice shall also be shown on the face of the recorded subdivision, short subdivision, lot line adjustment or binding site plan for all affected lots:

NOTICE

Lots and structures located within Flood Hazard Areas may be inaccessible by emergency vehicles during flood events. Residents and property owners should take appropriate advance precautions.

- E. New residential structures and improvements that include the creation of new impervious surfaces associated with existing residential structures shall meet the following requirements:
1. The lowest floor shall be elevated to the flood protection elevation;
 2. Portions of a structure which are below the lowest floor area shall not be fully enclosed. The areas and rooms below the lowest floor shall be designed to automatically equalize hydrostatic and hydrodynamic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for satisfying this requirement shall meet or exceed the following requirements:
 - a. A minimum of two openings on opposite walls having a total open area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
 - b. The bottom of all openings shall be no higher than one foot above grade; and
 - c. Openings may be equipped with screens, louvers or other coverings or devices if they permit the unrestricted entry and exit of floodwaters;

3. Materials and methods which are resistant to and minimize flood damage shall be used; and
 4. All electrical, heating, ventilation, plumbing, air conditioning equipment and other utility and service facilities shall be floodproofed to or elevated above the flood protection elevation.
- F. New nonresidential structures and substantial improvements of existing nonresidential structures shall meet the following requirements:
1. **Elevation.**
 - a. Requirements for residential structures contained in subsection (E)(1) of this section shall be met; or
 - b. The structure shall be floodproofed to the flood protection elevation and shall meet the following requirements:
 - i. The applicant shall provide certification by a professional civil or structural engineer licensed by the State of Washington that the floodproofing methods are adequate to withstand the flood depths, pressures, velocities, impacts, uplift forces and other factors associated with the base flood. After construction, the engineer shall certify that the permitted work conforms with the approved plans and specifications; and
 - ii. Approved building permits for floodproofed nonresidential structures shall contain a statement

notifying applicants that flood insurance premiums shall be based upon rates for structures which are one foot below the floodproofed level;

2. Materials and methods which are resistant to and minimize flood damage shall be used; and
 3. All electrical, heating, ventilation, plumbing, air conditioning equipment and other utility and service facilities shall be floodproofed to or elevated above the flood protection elevation.
- G. All new construction shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- H. Mobile homes and mobile home parks shall not be permitted in flood hazard areas.
- I. Utilities shall meet the following requirements:
1. New and replacement utilities including, but not limited to, sewage treatment facilities shall be floodproofed to or elevated above the flood protection elevation;
 2. Aboveground utility transmission lines, other than electric transmission lines, shall only be allowed for the transport of nonhazardous substances; and
 3. Buried utility transmission lines transporting hazardous substances shall be installed at a minimum depth of four feet below the maximum depth of scour for the base flood, as predicted by a professional civil engineer licensed by the State of Washington, and

shall achieve sufficient negative buoyancy so that any potential for flotation or upward migration is eliminated.

- J. Critical facilities may be allowed within the flood fringe of the floodplain, but only when no feasible alternative site is available. Critical facilities shall be evaluated through the conditional or special use permit process. Critical facilities constructed within the flood fringe shall have the lowest floor elevated to three or more feet above the base flood elevation. Floodproofing and sealing measures shall be taken to ensure that hazardous substances will not be displaced by or released into floodwaters. Access routes elevated to or above the base flood elevation shall be provided to all critical facilities from the nearest maintained public street or roadway.
- K. Prior to approving any permit for alterations in the flood fringe, the City shall determine that all permits required by State or Federal law have been obtained. (Ord. 238 Ch. VIII § 6(C), 2000).

20.80.390 Zero-rise floodway – Development standards and permitted alterations.

- A. The requirements which apply to the flood fringe shall also apply to the zero-rise floodway. The more restrictive requirements shall apply where there is a conflict.
- B. A development proposal including, but not limited to, new or reconstructed structures shall not cause any increase in the base flood elevation unless the following requirements are met:
 - 1. Amendments to the flood insurance rate map are adopted by FEMA, in accordance with 44 CFR 70, to incorporate the increase in the base flood elevation; and

2. Appropriate legal documents are prepared in which all property owners affected by the increased flood elevations consent to the impacts on their property. These documents shall be filed with the title of record for the affected properties.
- C. The following are presumed to produce no increase in base flood elevation and shall not require a special study to establish this fact:
1. New residential structures outside the FEMA floodway on lots in existence before November 27, 1990, which contain less than 5,000 square feet of buildable land outside the zero-rise floodway and which have a total building footprint of all proposed structures on the lot of less than 2,000 square feet;
 2. Substantial improvements of existing residential structures in the zero-rise floodway, but outside the FEMA floodway, where the footprint is not increased; or
 3. Substantial improvements of existing residential structures meeting the requirements for new residential structures in this title.
- D. Post or piling construction techniques which permit water flow beneath a structure shall be used.
- E. All temporary structures or substances hazardous to public health, safety and welfare, except for hazardous household substances or consumer products containing hazardous substances, shall be removed from the zero-rise floodway during the flood season from September 30th to May 1st.

F. New residential structures or any structure accessory to a residential use shall meet the following requirements:

1. The structures shall be outside the FEMA floodway; or
2. The structures shall be on lots in existence before November 27, 1990, which contain less than 5,000 square feet of buildable land outside the zero-rise floodway. Structures shall be designed and situated to minimize encroachment into the zero-rise floodway.

G. Utilities may be allowed within the zero-rise floodway if the City determines that no feasible alternative site is available, subject to the requirements of this section. Construction of sewage treatment facilities shall be prohibited.

H. Critical facilities shall not be allowed within the zero-rise floodway except as provided in subsection (I) of this section.

I. Structures and installations which are dependent upon the floodway may be located in the floodway if the development proposal is approved by all agencies with jurisdiction. Such structures include, but are not limited to:

1. Dams or diversions for water supply, flood control; or fisheries enhancement;
2. Flood damage reduction facilities, such as levees and pumping stations;
3. Stream bank stabilization structures where no feasible alternative exists for protecting public or private property;

4. Stormwater conveyance facilities subject to the development standards for streams and wetlands and the surface water design manual;
5. Boat launches and related recreation structures;
6. Bridge piers and abutments; and
7. Other fisheries enhancement or stream restoration projects. (Ord. 238 Ch. VIII § 6(D), 2000).

20.80.400 FEMA floodway – Development standards and permitted alterations.

- A. The requirements which apply to the zero-rise floodway shall also apply to the FEMA floodway. The more restrictive requirements shall apply where there is a conflict.
- B. A development proposal including, but not limited to, new or reconstructed structures shall not cause any increase in the base flood elevation.
- C. New residential or nonresidential structures shall be prohibited within the FEMA floodway.
- D. Substantial improvements of existing residential structures in the FEMA floodway, meeting the requirements of WAC 173-158-070, as amended, are presumed to produce no increase in base flood elevation and shall not require a special study to establish this fact. (Ord. 238 Ch. VIII § 6(E), 2000).

20.80.410 Flood hazard areas – Certification by engineer or surveyor.

- A. For all new structures or substantial improvements in a flood hazard area, the applicant shall provide

certification by a professional civil engineer or land surveyor licensed by the State of Washington of:

1. The actual as-built elevation of the lowest floor, including basement; and
 2. The actual as-built elevation to which the structure is floodproofed, if applicable.
- B. The engineer or surveyor shall indicate if the structure has a basement.
- C. The City shall maintain the certifications required by this section for public inspection. (Ord. 238 Ch. VIII § 6(F), 2000).

Subchapter 6. Aquifer Recharge Areas

20.80.420 Description and purpose.

- A. Aquifer recharge areas provide a source of potable water and contribute to stream discharge during periods of low flow. Urban-type pollutants may enter watercourse supplies through potential infiltration of pollutants through the soil to ground water aquifers.
- B. The primary purpose of aquifer recharge area regulations is to protect aquifer recharge areas by providing for regulation of land use activities that pose a risk of potential aquifer contamination and to minimize impacts through the application of strict performance standards. (Ord. 238 Ch. VIII § 7(A), 2000).

20.80.430 Classification.

Aquifer recharge areas shall be classified based on the soil and ground water conditions and risks to surface water during periods of low hydrology. Classification depends on the combined effects of hydrogeological susceptibility to contamination and contaminant loading potential, and includes upland areas underlain by soils consisting largely of silt, clay or glacial till, upland areas underlain by soils consisting largely of sand and gravel, and wellhead protection areas and areas underlain by soils consisting largely of sand and gravel in which there is a predominantly downward or lateral component to ground water flow. (Ord. 238 Ch. VIII § 7(B), 2000).

20.80.440 Alteration.

The following land uses and activities shall require implementation of Best Management Practices (BMPs) as established by the Department of Ecology:

- A. Land uses and activities that involve the use, storage, transport or disposal of significant quantities of chemicals, substances or materials that are toxic, dangerous or hazardous, as those terms are defined by State and Federal regulations.
- B. On-site community sewage disposal systems.
- C. Underground storage of chemicals.
- D. Petroleum pipelines.
- E. Solid waste landfills. (Ord. 238 Ch. VIII § 7(C), 2000).

20.80.450 Performance standards and requirements.

Any uses or activities located in a aquifer recharge area, as defined within this subchapter, that involve the use, storage, transport or disposal of significant quantities of chemicals, substances, or materials that

are toxic, dangerous or hazardous, as those terms are defined by State and Federal regulations, shall comply with the following additional standards:

- A. Underground storage of chemicals, substances or materials that are toxic, hazardous or dangerous is discouraged.
- B. Any chemicals, substances or materials that are toxic, hazardous or dangerous shall be segregated and stored in receptacles or containers that meet State and Federal standards.
- C. Storage containers shall be located in a designated, secured area that is paved and able to contain leaks and spills, and shall be surrounded by a containment dike.
- D. Secondary containment devices shall be constructed around storage areas to retard the spread of any spills and a monitoring system should be implemented.
- E. A written operations plan shall be developed, including procedures for loading/unloading liquids and for training of employees in proper materials handling.
- F. An emergency response/spill clean-up plan shall be prepared and employees properly trained in to react to accidental spills.
- G. Any aboveground storage tanks shall be located within a diked containment area on an impervious surface. The tanks shall include overfill protection systems and positive controls on outlets to prevent uncontrolled discharges.
- H. Development should be clustered and impervious surfaces limited where possible.

- I. No waste liquids or chemicals of any kind shall be discharged to storm sewers.
- J. All development shall implement Best Management Practices (BMPs) for water quality, as approved by the City, including the standards contained within the City of Shoreline Stormwater Design Manual, such as biofiltration swales and use of oil-water separators, and BMPs appropriate to the particular use proposed. (Ord. 238 Ch. VIII § 7(D), 2000).

Subchapter 7. Stream Areas

20.80.460 ~~Description~~ Designation and purpose.

- 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 devices 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.
- B. Stream areas and their associated buffers provide important fish and wildlife habitat and corridors; help to maintain water quality; store and convey stormwater and floodwater; recharge groundwater; and serve as areas for recreation, education and scientific study and aesthetic appreciation.
- BC. The primary purpose of the stream area regulations is to avoid impacts to streams and associated riparian corridors and where possible, provide for stream enhancement and rehabilitation. (Ord. 238 Ch. VIII § 8(A), 2000).

The definition of streams is added to the beginning of the streams regulations to clarify what areas the regulations apply to.

20.80.470 Classification.

Streams shall be designated ~~Type I, Type II, Type III, and Type IV~~ according to the criteria in this section. When more than one stream type is present in short alternating segments on a subject property, it will be classified according to the stream type which is more restrictive.

- 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 ~~have one of the following characteristics:~~
- ~~1. Salmonid fish use;~~
 - ~~2. Potential for salmonid fish use; or~~
 - ~~3. Significant recreational value.~~
- 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 three ordinary high water mark that 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.
- E. "Piped stream segments" are those segments of streams, regardless of their type that are fully enclosed in and underground pipe or culvert.

The classification of type II streams is simplified to focus on salmonid fish use as the qualifying factor.

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;

2. Streams that are fish passable by salmonid populations from Lake Washington 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 Washington Department of Fish and Wildlife; and

3. Streams that are:

a. planned for restoration in a 6-year capital improvement plan adopted by a government agency that will result in a fish passable connection to Lake Washington or Puget Sound.

b. planned removal of the private dams that will result in a fish passable connection to Lake Washington.

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.

~~E. "Intentionally created streams" are those manmade streams defined as such in these regulations, and do not include streams created as mitigation. Purposeful creation must be demonstrated to the City through documentation, photographs, statements and/or other evidence. Intentionally created streams may include~~

Subsection F is proposed to clarify the term "salmonid fish use". Salmonid fish use is defined for where fish have been documented as well as where they are presumed based on passability or planned restoration.

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).

~~irrigation and drainage ditches, grass-lined swales and canals. Intentionally created streams are excluded from regulation under this subchapter, except manmade streams that provide critical habitat for species of fish and wildlife that are proposed or listed by the Federal government or State of Washington as endangered, threatened, critical, or priority species. Intentionally created streams that provide documented critical habitat for these species shall be classified and treated as natural streams.~~ (Ord. 238 Ch. VIII § 8(B), 2000).

20.80.480 Required buffer areas.

- A. Required buffer widths shall reflect the sensitivity of the stream type, the risks associated with development and, in those circumstances permitted by these regulations, the type and intensity of human activity and site design proposed to be conducted on or near the stream area. Stream buffers shall be measured from the ordinary high water mark (OHWM) or the top of the bank, if the OHWM can not be determined.

- B. The following buffers are established for streams:

Table 20.80.480B

Draft Critical Areas Update – October 6, 2005

Review of science indicates that larger buffers tend to provide greater protection and that very small buffers provide only minimal protective function. Therefore it is proposed to increase some of the buffers to be more consistent with the

Stream Type	Standard Buffer Width (ft)	Minimum Buffer Width (ft)
Type I	150	400 <u>115</u>
Type II	400 <u>115</u>	75
Type III	50 <u>65</u>	25 <u>35</u>
Type IV	25 <u>35</u>	40 <u>25</u>
Piped Stream Segments	<u>10</u>	<u>10</u>

C. The ~~maximum~~ standard buffer width ~~will~~ 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 buffer is adequate to protect the stream functions and implements one or more enhancement measures to result in a net improvement to the stream and buffer. The measures determined most applicable and/or appropriate will be considered in reducing buffer requirements. These include but are not limited to:

1. Removal of fish barriers to restore accessibility to anadromous fish.
2. Enhancement of fish habitat using log structures incorporated as part of a fish habitat enhancement plan.
3. Enhancement of fish and wildlife habitat structures that are likely to be used by wildlife, including wood duck houses, bat boxes, nesting platforms, snags, rootwads/stumps, birdhouses, and heron nesting areas.

4. Additional enhancement measures may include:

- a. Planting native vegetation within the buffer area, especially vegetation that would increase value for fish and wildlife, increase stream bank or slope stability, improve water quality, or provide aesthetic/recreational value; or
- b. Creation of a surface channel where a stream was previously underground, in a culvert or pipe. Surface channels which are "daylighted" shall be located within a buffer area and shall be designed with energy dissipating functions such as meanders to reduce future erosion;
- c. Removal or modification of existing stream culverts (such as at road crossings) to improve fish passage and flow capabilities; or
- d. Upgrading of retention/detention facilities or other drainage facilities beyond required levels.

D. No structures or improvements shall be permitted within the stream buffer area, including buildings, decks, docks, except as otherwise permitted or required under the City's adopted Shoreline Master Program, or under one of the following circumstances:

- 1. When the improvements are part of an approved rehabilitation or mitigation plan; or
- 2. For the construction of new roads and utilities, and accessory structures, when no feasible alternative location exists; or

3. The construction of trails, over and in the buffer of piped stream segments, and the construction of trails near other stream segments consistent with the following criteria:
 - a. Trails should be constructed of permeable materials;
 - b. Trails shall be designed in a manner that minimizes impact on the stream system;
 - c. Trails shall have a maximum trail corridor width of 10 feet; and
 - d. Trails should be located within the outer half of the buffer, i.e., that portion of the buffer that is farther away from the stream; or
 4. The construction of footbridges; or
 5. The construction and placement of informational signs or educational demonstration facilities limited to no more than one square yard surface area and four feet high, provided there is no permanent infringement on stream flow; or
 6. The establishment of stormwater management facilities, such as bio-swales, over and in the buffer of piped stream segments and when located outside of the minimum buffer area for other stream segments as set forth in the Table 20.80.480B.
- E. The City may extend the width of the buffer on the basis of site-specific analysis when necessary to comply with an adopted basin plan in accordance

with City, County, State or Federal plans to preserve endangered or threatened species.

- F. Stream 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:

~~1. Buffer width averaging shall be allowed only where the applicant demonstrates to the City that the stream 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;~~

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

2. ~~and t~~That the total area contained within the buffer after averaging is no less than that contained within the standard buffer prior to averaging.

23. Buffer averaging shall not result in the buffer width being reduced by more than 25 percent of the required buffer as set forth in the table in subsection B of this section and in no case may the buffer be less than 25 feet in the stated minimum width.

The City may require buffer averaging to be designed to protect areas of greater sensitivity and function based on the recommendations of a stream report prepared by a qualified professional.

- G. ~~Relocation of a Type I, II, III stream in order to facilitate general site design shall not be allowed.~~

The subsection on stream buffer averaging is outlined to make it easier to follow the specific criteria. The criteria are revised to be more in line with the code adopted by King County following best available science review. The "sensitivity" statement is rephrased at the end of the subsection to make it clearer how sensitivity relates to buffer averaging.

~~Relocation of these classes of streams may take place only when the proposed relocation is part of an approved mitigation or rehabilitation plan, will result in equal or better habitat and water quality, and will not diminish the flow capacity of the stream. Relocation of a Type IV stream shall be allowed only when the proposed relocation will result in equal or better habitat and water quality and will not diminish the flow capacity of the stream.~~

H. Restoring piped watercourses.

1. The city encourages the opening of previously channelized/culverted streams and the rehabilitation and restoration of streams.
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 feet 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.
3. Removal of pipes conveying streams shall only occur when the City determines that the proposal will result in a net improvement of water quality and ecological functions and will not significantly increase the threat of erosion, flooding, slope stability or other hazards.
4. Where the buffer of the restored stream would extend beyond a required setback on an adjacent property, the applicant shall

Subsection H is proposed to encourage watercourse restoration and to recognize that standard buffers discourage such restoration. It also establishes a review process for restoration to ensure that it doesn't result in negative impacts.

obtain a written agreement from the affected neighboring property owner.

(Ord. 299 § 1, 2002; Ord. 238 Ch. VIII § 8(C), 2000).

20.80.490 Alteration.

- A. Bridges shall be used to cross Type I streams. Culverted crossings and other obstructive means of crossing Type I streams shall be prohibited.
- B. Culverts are allowable only under the following circumstances:
 - 1. Crossing of Type II, III, and IV streams;
 - 2. When fish passage will not be impaired;
 - 3. When the following design criteria are met:
 - a. Oversized culverts will be installed;
 - b. Culverts will include gradient controls and creation of pools within the culvert for Type II streams where appropriate; and
 - c. Gravel substrate will be placed in the bottom of the culvert to a minimum depth of one foot for Type II streams;
 - 4. The applicant or successors shall, at all times, keep any culvert free of debris and sediment to allow free passage of water and, if applicable, fish.
- C. The City may require that a culvert be removed from a stream as a condition of approval, unless it is demonstrated conclusively that the culvert is

not detrimental to fish habitat or water quality, or removal would be detrimental to fish or wildlife habitat or water quality. (Ord. 238 Ch. VIII § 8(D), 2000).

20.80.500 Mitigation performance standards and requirements.

A. Appropriate Stream Mitigation Sequence and Actions. Where impacts cannot be avoided, and the applicant has exhausted feasible design alternatives, the applicant or property owner shall seek to implement other appropriate mitigation actions in compliance with the intent, standards and criteria of this section. In an individual case, these actions may include consideration of alternative site plans and layouts, reductions in the density or scope of the proposal, and/or implementation of the performance standards listed in this section.

B. Significant adverse impacts to stream area functions and values shall be mitigated. Mitigation actions shall be implemented in the preferred sequence: Avoidance, minimization, restoration and replacement. Proposals which include less preferred and/or compensatory mitigation shall demonstrate that:

1. All feasible and reasonable measures will be taken to reduce impacts and losses to the stream, or to avoid impacts where avoidance is required by these regulations; and
2. The restored, created or enhanced stream area or buffer will be available and persistent as the stream or buffer area it replaces; and
3. No overall net loss will occur in stream functions and values.

C. Location and Timing of Stream Mitigation.

1. Mitigation shall be provided on-site, unless on-site mitigation is not scientifically feasible due to the physical features of the property. The burden of proof shall be on the applicant to demonstrate that mitigation cannot be provided on-site.
2. When mitigation cannot be provided on-site, mitigation shall be provided in the immediate vicinity of the permitted activity on property owned or controlled by the applicant such as an easement, provided such mitigation is beneficial to the critical area and associated resources. It is the responsibility of the applicant to obtain title to off-site mitigation areas.
3. In-kind mitigation shall be provided except when the applicant demonstrates and the City concurs that greater functional and habitat value can be achieved through out-of-kind mitigation.
4. Only when it is determined by the City that subsections (B)(1), (2), and (3) of this section are inappropriate and impractical shall off-site, out-of-kind mitigation be considered.
5. When stream mitigation is permitted by these regulations on-site or off-site, the mitigation project shall occur near an adequate water supply (river, stream, ground water) with a hydrologic connection to the mitigation area to ensure successful development or restoration.
6. Any agreed upon mitigation proposal shall be completed prior to project construction, unless a phased schedule, that assures completion concurrent with project construction, has been approved by the City.

7. Restored or created streams, where permitted by these regulations, shall be an equivalent or higher stream value or function than the altered stream.
- D. The performance standards in this section and the relevant performance standards located within the wetland standards of SMC 20.80.350(E)(1) through (17) shall be incorporated into mitigation plans submitted to the City for impacts to critical areas. In addition, the City may prepare a technical manual which includes guidelines and requirements for report preparation. The performance standards shall apply to any mitigations proposed within Type I, Type II or Type III streams within the City.
- E. On completion of construction, any approved mitigation project must be signed off by the applicant's qualified consultant and approved by the City. Signature of the qualified consultant and approval by the City will indicate that the construction has been completed as planned.
- F. **Monitoring Program and Contingency Plan.** A monitoring program shall be implemented by the applicant to determine the success of the mitigation project and any necessary corrective actions. This program shall determine if the original goals and objectives are being met. The monitoring program will be established consistent with the guidelines contained in SMC 20.80.350(G). (Ord. 238 Ch. VIII § 8(E), 2000).

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

From: Weyl, Linda (CTED) [mailto:LindaWe@CTED.WA.GOV]
Sent: Monday, March 14, 2005 2:29 PM
To: David Andersen; Leonard Bauer; Weyl, Linda (CTED)
Cc: Fritz, Anne (CTED); Nwankwo, Ike (CTED); City Council; Tim
Stewart; Taylor, Kathy(PSAT); 'penttdep@dfw.wa.gov'; Matt Torpey
Subject: CTED's Formal Comment Letter 8635_City of Shoreline

Regarding: Proposed critical areas ordinance update building upon the
2000 incorporation of best available science.

<<8635_DR Amendment 3-05.pdf>>

Linda Weyl
Washington State Department of Community,
Trade and Economic Development
Growth Management Services
906 Columbia Street Southwest
Post Office Box 42525
Olympia, Washington 98504-2525
(360) 725-3066
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STATE OF WASHINGTON

DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT

128 - 10th Avenue SW • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000

March 14, 2005

Mr. David Harris, Chair
City of Shoreline Planning Commission
17544 Midvale Avenue North
Shoreline, Washington 98133

RE: Proposed critical areas ordinance update building upon the 2000 incorporation of best available science

Dear Mr. Harris:

Thank you for sending the Washington State Department of Community, Trade and Economic Development (CTED) the proposed amendments to Shoreline's critical areas ordinance (CAO) that we received on January 18, 2005. We recognize the substantial investment of time, energy, and resources that these documents represent.

We especially like the following:

- The City of Shoreline is continuing to update its CAO to incorporate the latest science and best methods to protect the functions and values of critical areas, and to protect citizens from the hazards they may represent.
- A section (H) has been added to subchapter 7 – Stream areas – to encourage the opening of previously channeled and culverted streams. A review process has been established to ensure that no negative impacts will result, and a minimum restored buffer of 10 feet is required, as this distance is already required in a utility corridor.

We have some suggestions for strengthening your amendments that we encourage you to consider either in these or future amendments:

- The fish and wildlife habitat conservation areas do not appear to address Shoreline's marine shorelines. We understand that the city is using King County's shoreline master program to protect those areas. Under ESHB 1933, a jurisdiction is to use its critical areas ordinance to protect designated critical areas along shorelines until a new SMP is adopted under Washington State Department of Ecology's (Ecology) new guidelines. In conversation with staff, we understand that much of the shoreline is bounded by a rail line, and few properties with development potential abut the shoreline. Regardless of past actions, the Growth Management Act (GMA) requires that the functions and values of existing critical areas are protected, and that special consideration is given to conservation or protection measures necessary to preserve or enhance anadromous fisheries. We recommend that the protections for marine shorelines should be at least as protective as those given to salmon bearing streams, given the important role of the marine nearshore for salmon smolts. For further guidance on shoreline issues, we urge you to contact Kathy Taylor of the Puget Sound Action Team at (253) 333-4920.

CAO PUBLIC COMMENT PC 025a

- Section 20.80.270 relates to the classification of fish and wildlife habitat areas. We appreciate that this has been clarified to show that the city designates these areas. We suggest that the city take a closer look at WAC 365-190-080(5) for a listing of all potential fish and wildlife habitat areas. Subsection (a)(1) states that these include areas that have a primary association with endangered, threatened, and sensitive species, as well as a number of priority habitats in Washington state. We understand that the city plans to address this need once the CAO update is adopted.
- We have reviewed the letter of February 17, 2005, from Ecology, and we encourage you to consider their comments.
- We appreciate that low impact development and enhancement are both considered for reducing the standard buffer width. We would like to make sure the city is aware of the *Low Impact Development Technical Guidance Manual* recently released by the Puget Sound Action Team and available at http://www.psat.wa.gov/Publications/LID_tech_manual05/lid_index.htm.
- Tsunami hazard areas have been included as a type of flood hazard area. Section 20.80.360 states that tsunami hazard areas may be designated by federal or state government. These governments can provide scientific information on potential and probable hazard areas, but designation is a local responsibility under the GMA. Inundation areas are being mapped by the Washington Department of Natural Resources, and some maps are available on the Internet at www.dnr.wa.gov/geology. This Web site also provides contact information for additional guidance. We encourage the city to review potential inundation areas and ensure that critical facilities or other inappropriate uses are not sited in these areas.
- Page 53 prohibits mobile homes and mobile home parks in the flood hazard areas. Senate Bill 6593, adopted in the 2004 legislative session, prohibits discrimination against consumers' choices in housing and requires that they be regulated, for the purposes of siting, the same as traditional stick built homes. A new section is added to RCW 35.21 to read as follows:

1) A city or town may not enact any statute or ordinance that has the effect, directly or indirectly, of discriminating against consumers' choices in the placement or use of a home in such a manner that is not equally applicable to all homes. Homes built to 42 U.S.C. Sec. 5401-5403 standards (as amended in 2000) must be regulated for the purposes of siting in the same manner as site built homes, factory built homes, or homes built to any other state construction or local design standard. However, any city or town may require that (a) a manufactured home be a new manufactured home; (b) the manufactured home be set upon a permanent foundation, as specified by the manufacturer, and that the space from the bottom of the home to the ground be enclosed by concrete or an approved concrete product which can be either load bearing or decorative; (c) the manufactured home comply with all local design standards applicable to all other homes within the neighborhood in which the manufactured home is to be located; (d) the home is thermally equivalent to the state energy code; and (e) the manufactured home otherwise meets all other requirements for a designated manufactured home as defined in RCW 35.63.160.

We suggest that you check with your attorney as to whether this regulation can be considered discriminatory, and review our example code as one way to regulate manufactured homes in potential flood areas.

- The section of this ordinance on critical aquifer recharge areas appears to need updating. We suggest that the city determine if there are wellhead protection areas, or areas with susceptible aquifer recharge areas, and refine the regulations according to guidance from Ecology. If there are no such areas within the city, then the sources of science used to determine their absence should be included in the record.

Mr. David Harris
March 14, 2005
Page 3

Congratulations to you and your staff for the good work these amendments embody. If you have any questions or concerns about our comments or any other growth management issues, please call me at (360) 725-3064 or Ike Nwankwo at (360) 725-3056. We extend our continued support to the City of Shoreline in achieving the goals of growth management.

Sincerely,



Anne Aurelia Fritzel
Growth Management Planner
Growth Management Services

AAF:lw

cc: The Honorable Ron Hansen, Mayor, City of Shoreline
Timothy Stewart, Director, Planning and Development Services, City of Shoreline
Matt Torpey, Planner 2, City of Shoreline
Kathy Taylor, Local Liaison, Puget Sound Action Team
Dan Pentilla, Wildlife Biologist, Washington Department of Fish and Wildlife
Leonard Bauer, AICP, Managing Director, Growth Management Services, CTED
Ike Nwankwo, Technical and Financial Assistance Manager, Growth Management Services, CTED
David Andersen, AICP, Planning Review Team Manager, Growth Management Services, CTED

CAO PUBLIC COMMENT PC 025a

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

From: Bunten, Donna [mailto:DBUN461@ECY.WA.GOV]
Sent: Wednesday, March 16, 2005 11:52 AM
To: Matt Torpey
Cc: Robohm, Richard
Subject: RE: Ecology's comments on Shoreline's draft CAO
Importance: High

Hi, Matt,

For the record, I figured I'd better send this letter to you as a "final", for the public hearing. I'm not bothering to re-send the enclosures.

Donna

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

From: Matt Torpey [mailto:mtorpey@ci.shoreline.wa.us]
Sent: Thursday, February 17, 2005 3:16 PM
To: Bunten, Donna
Subject: RE: Ecology's comments on Shoreline's draft CAO

Hi Donna,

Thank you for the draft, it looks like good news. You are correct that the 1st Public Hearing is scheduled for 3/17/05. We are having our 2nd and hopefully final workshop tonight. If the commission chooses to hold another workshop, we will have to reschedule the hearing for a later date. I will keep you informed.

Thank you,

Matt.

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

From: Bunten, Donna [mailto:DBUN461@ECY.WA.GOV]
Sent: Thursday, February 17, 2005 2:44 PM
To: Matt Torpey
Subject: FW: Ecology's comments on Shoreline's draft CAO

Hi, Matt,

Attached is a draft letter from Richard Robohm, commenting on the wetlands portion of your CAO update. If you have any questions or concerns about this letter, please contact Richard at (425) 649-4447 or

riro461@ecy.wa.gov. We'll send the letter as a "final" after you've had a chance to review it.

Did I understand correctly from Richard that your Planning Commission public hearing has been rescheduled for 3/17?

Let me know if I can help with any part of this process.

<<Shoreline CAO - Ecology draft comment ltr 02-17-05.doc>> <<Appendix 8-C.pdf>>
<<Appendix 8-E.pdf>> <<Appendix 8-F.pdf>>

Donna J. Bunten
CAO Review Coordinator
Dept. of Ecology
P.O. Box 47600
Olympia, WA 98504
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dbun461@ecy.wa.gov

CAO PUBLIC COMMENT PC 026



STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

P.O. Box 47600 • Olympia, Washington 98504-7600
(360) 407-6000 • TDD Only (Hearing Impaired) (360) 407-6006

March 16, 2005

Mr. Matthew Torpey, Planner
Planning and Development Department
City of Shoreline
17544 Midvale Avenue North
Shoreline, WA 98133-4921

Dear Mr. Torpey:

Re: Review of Shoreline's Draft Critical Areas Code

Thank you for the chance to comment on the proposed revision of Shoreline's critical areas ordinance (CAO) dated January 10, 2005.

I appreciate the work that went into this proposed revision and applaud your efforts to include best available science (BAS) in developing your regulations. The comprehensiveness of the draft regulations shows that a great deal of thought and care went into this work.

The Washington State Department of Ecology (Ecology) supports the draft CAO's stated purpose to "reduce cumulative adverse environmental impacts to water quality, wetlands, streams and other aquatic resources." We also support the goal of the CAO "to avoid detrimental wetland impacts and achieve a goal of no net loss of wetland function value and acreage; and where possible enhance and restore wetlands." We appreciate the repeated emphasis on requiring "no net loss" throughout the proposed CAO, and note that it incorporates increased buffer protection and higher wetland replacement ratios.

While the proposed ordinance generally does a good job of protecting critical-area functions and values, portions of it rely on standards that put wetland functions in Shoreline at risk and will not help the City achieve the goals cited above. We believe that revising sections of the draft CAO as suggested below would do a better job of including BAS and protecting wetland functions.

20.80.030.F Exemptions.

It is reasonable to drop the requirement to avoid impacts on very small, degraded wetlands with low function and to exempt the smallest wetlands. The added conditions that exempt wetlands must be isolated, mostly altered or covered by invasives, and of low function are a welcome improvement on the existing ordinance. When cumulative impacts will be between 1,000 and 2,500 square feet, the City should require mitigation or consider using a fee-in-lieu system that could fund local restoration projects.

CAO PUBLIC COMMENT PC 026a

20.80.320 Classification.

We recommend that the City adopt Ecology's *Washington State Wetland Rating System for Western Washington* (Ecology Publication #04-06-025, August 2004; see <http://www.ecy.wa.gov/programs/sea/wetlan.html>). This revised rating system was developed through an analysis of wetland function, extensive field research, and scientific review by a team of about 35 planners and scientists. It is based on a better understanding of wetland functions, ways to evaluate them, and what is needed to protect them. In cases where state and federal permits are required, the use of this rating system would benefit applicants by eliminating the need to rate wetlands according to a different local standard. In addition to King County, Kitsap and Pierce counties and many of the cities within them have already adopted or are now proposing to adopt Ecology's updated wetland rating system.

The October 2003 technical memorandum by Adolfson Associates, Inc., which summarized the best available science for the City, noted the lack of detailed information on the City's wetlands. In many cases, using the revised rating system provides enough information about existing wetland functions to allow adequate plan review and land-use decisions without the additional expense of a separate wetland functional assessment.

20.80.330 Required buffer areas.

The draft CAO's buffers offer greater protection than those of the existing ordinance but remain on the low end of the range supported by the extensive scientific literature that Ecology reviewed. The proposed buffers do not consider wetland function or adjacent land use. Category I and II wetlands with high habitat value and sensitive wetlands such as bogs will not be adequately protected in areas with high-intensity land uses. On the other hand, the proposed CAO may mandate buffers that are actually wider than those possible under a flexible approach that matches buffers to the functions in need of protection.

Information on wetland functions provided by the new rating system allows for buffers to be tailored to particular wetlands. We recommend an approach that takes into account the specific wetland functions that require protection and allows for buffer reductions if certain site-design features that reduce impacts are used. While this approach appears complex at first, it provides the most predictability and is best aligned with the current scientific literature on buffers. This approach was designed in conjunction with local planners and consultants and is best suited to fit the range of circumstances found in a jurisdiction such as Shoreline. Both King and Pierce Counties included this approach in their recently adopted ordinances, and it was supported by the Tacoma-Pierce County realtors, by the Master Builders in both jurisdictions, as well as by 1000 Friends of Washington.

This buffer approach is described in Buffer Alternative 3 (Tables 4 through 7) in the enclosed Appendix 8-C of *Wetlands in Washington State— Volume 2: Guidance for Protecting and Managing Wetlands* (Ecology publication #04-06-024; August 2004). The enclosed Appendix 8-E explains the reasons for the recommended buffer widths. (See our web site for links to the entire guidance document, including *Volume 1: A Synthesis of the Science*: http://www.ecy.wa.gov/programs/sea/bas_wetlands/index.html.)

The advantages of using Alternative 3 include the following:

1. It provides for specific buffer widths based on the more detailed information provided by the new wetland rating system that you are proposing to adopt.
2. It is based on the best available science regarding wetland buffers and provides for wider buffers around the more valuable and sensitive wetlands and narrower buffers around the wetlands that are less valuable and sensitive.
3. It will generally result in smaller buffers around wetlands in highly urbanized areas because many of the wetlands in developed areas are not providing the habitat functions that require larger buffers.
4. It provides incentives to landowners and developers to incorporate low-impact site-development measures to reduce runoff, noise, light, etc. Using such measures allows for reduced buffers.
5. It provides incentives to landowners and developers to provide connectivity between wetlands on their property and other habitat areas in exchange for reduced buffers.

This approach provides predictability for applicants while reducing the risk that the City will be seen as acting arbitrarily or capriciously in applying buffer standards or allowing buffer reductions. It allows for reduced buffers where the adjacent land use is of moderate or low intensity. We encourage you to try applying this approach to a couple of projects in Shoreline to see how it might work in your specific circumstances.

20.80.350 Mitigation performance standards and requirements.

The draft CAO's proposed replacement ratios are consistent with Ecology's recommendations and are a clear and simple guide to compensating for wetland losses. We suggest you also consider using the guidance on compensatory mitigation on pages 12 to 19 of Appendix 8-C of Volume 2.

Although this approach is more complex, it is also more flexible and accounts for a wide range of impacts and mitigation strategies. Table 9 in this appendix shows suggested compensation ratios for different types and categories of wetlands and for various kinds of mitigation. Appendix 8-F explains the rationale used to develop the mitigation ratios. This guidance is consistent with what the state and federal agencies require for mitigation. By adopting this guidance, the City will help applicants by providing consistency with state and federal requirements, which will streamline the approval process for mitigation projects.

• • •

We have several additional suggestions for improvements to the draft CAO that we believe would strengthen the regulations and increase protection of Shoreline's wetland functions.

20.20.054 Wetland Edge.

The *Washington State Wetlands Identification and Delineation Manual* (Publication #96-94; see www.ecy.wa.gov/programs/sea/wetlan.html), March 1997, is consistent with the federal delineation manual cited in your draft ordinance. The state delineation manual was adopted via WAC 173-22-080 in response to direction by the state legislature and it must be used to implement GMA

regulations. Your revised ordinance should reference this manual in the "Definitions" chapter and in Section 20.80.330

20.80.030.B Exemptions.

Utilities such as transmission lines, sewer lines, and pipelines can require clearing and permanently maintaining wide areas, with adverse effects on wetland and buffer functions. We are pleased to see that the City requires the use of best management practices. We recommend that the City also require compensatory mitigation for any impacts on wetlands from utility construction. Maintenance of utility corridors within existing easements or rights-of-way should be on condition that actions do not expand further into the critical area.

20.80.080 Alteration or development of critical areas—Standards and criteria.

As defined by WAC 197-11-768 mitigation is a sequence of six steps to be followed to reduce potential impacts on the environment. The first five of these steps are given in the draft CAO. We recommend completing the list by adding the sixth step:

6. *Monitoring the impact and taking appropriate corrective measures.*

20.80.330 Required buffer areas.

Regarding Paragraphs F (sic) and G, Ecology recommends that trails in wetlands or buffers should be limited to permeable surfaces no more than five feet wide and for pedestrian use only. They should be restricted to the outer 25% of a wetland buffer, and should be located to avoid removal of significant trees. Stormwater facilities should be limited to dispersion outfalls and bioswales and should be allowed in the outer 25% of the buffer of Category III or IV wetlands only.

We would be glad to discuss our comments with you and to provide any service you think would be helpful. I look forward to working with you to support your efforts to update Shoreline's CAO using best available science. Please call or e-mail me with any questions or for further discussion. I can be reached at (425) 649-4447 or riro461@ecy.wa.gov.

Sincerely,



Richard K. Robohm
Wetland Specialist

Enclosures

RKR:rc

cc: Anne Fritzel, Department of Community, Trade and Economic Development
Dan Penttila, Washington Department of Fish & Wildlife
Donna Buntten, Ecology CAO Review Coordinator

CAO PUBLIC COMMENT PC 026a

OCTOBER 2003

DRAFT

TECHNICAL MEMORANDUM:

**SELECTED SUMMARY OF
BEST AVAILABLE SCIENCE
IN SUPPORT OF CITY OF SHORELINE
CRITICAL AREAS UPDATE**

Prepared for:

Berryman & Henigar

Prepared by:

**Adolfson Associates, Inc.
5309 Shilshole Avenue NW, Suite 200
Seattle, Washington 98107**

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1 INTRODUCTION

1.1 Project Authorization

At the request of the City of Shoreline, Adolfson Associates, Inc. (Adolfson) has prepared this technical memorandum to provide guidance to the City as they develop the “best available science” record for the update of their critical areas ordinance. Adolfson focused on providing a brief summary of scientific information related to managing the City’s stream, wetland, wildlife, and marine/nearshore resources.

This technical memorandum summarizes the findings of a brief review of selected scientific documents and evaluates the applicability of the science to the City’s critical areas. This review includes relevant studies from the Office of Community Development’s “Citations of Recommended Sources for Designating and Protecting Critical Areas,” as well as other selected sources. This review was limited by the available scope and budget authorized for this task. Additional scientific information, not reviewed under this scope of work, may be relevant to the City’s critical areas. No field visits were conducted as a part of the development of this technical memorandum.

1.2 Overview of Growth Management Act Requirements

Under the 1990 Growth Management Act (GMA) (RCW 360.70A.060), counties and cities are required to adopt development regulations that protect the functions and values of critical areas including, but not limited to, streams, wetlands, and wildlife habitat. In 1995, the Washington State legislature added a new section to the GMA to ensure that counties and cities consider reliable scientific information when adopting policies and development regulations to designate and protect critical areas. RCW 36.70A.172(1) states:

In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas.

In addition, RCW 36.70A.172(1) states that special consideration must be given to “measures necessary to preserve or enhance anadromous fisheries,” which refers to those species that reproduce in fresh water and migrate to salt water for some portion of their life, returning to fresh water. The term “fisheries” commonly refers to stocks of fish that are managed for commercial, recreational, cultural, or ceremonial uses (WDFW, 1997).

In response to this legislation, the State Office of Community, Trade, and Economic Development (CTED) promulgated rules to guide cities and counties in identifying and including the best available science in their critical area policies and regulations. These rules are found under WAC 365-195-900-925.

2 STREAMS AND RIPARIAN AREAS

2.1 Importance of Streams and Riparian Areas

Stream systems are one of the most productive natural ecosystems. Riparian areas play a significant role in the protection of the functions of adjacent aquatic habitats. Both streams and their riparian areas provide important habitats for aquatic species and other wildlife, as well as contribute to recreation, water supply, economic, and cultural and historic values. Specific stream functions are discussed in the following section.

2.2 Functions of Streams

Elements necessary for healthy salmonid populations and for populations of other aquatic organisms rely on processes sustained by the dynamic interaction between the streams and their adjacent riparian areas (Naiman et al., 1992). Stream and riparian area functions include:

- Maintaining stream baseflows;
- Maintaining water quality;
- Providing in-stream structural diversity; and
- Providing biotic input of insects and organic matter.

2.3 Function of Riparian Buffers

Riparian buffers along stream banks help to mitigate the impacts of urbanization and disturbance on adjacent lands (Finkenbine et al., 2000 in Bolton and Shellberg, 2001). Knutson and Naef (1997) summarize many of the functions of riparian buffers for Washington. The Washington Department of Fish and Wildlife's (WDFW) recommended standard buffer widths previously released in the Office of Community Development's Model Critical Areas Code for the state's five-tier stream typing system were based on this latter research (Table 1) (OCD, 2002). The model code is currently being revised.

Buffer widths reported to be effective for riparian functions vary considerably by function; the literature is not definitive in identifying one buffer width for each function studied (Williams and Lavey, 1986; Johnson and Ryba, 1992). The wide range of reported effective buffer widths indicates that site-specific factors such as climate, slope, aspect, and land use are also important in determining the outcome of each study. However, a general relationship between buffer width and buffer effectiveness can be found in reviews of previous studies on buffers. Studies indicate that buffers 100 to 150 feet (30 to 45 meters) wide provide most (on the order of 80 percent) of the potential functions. In general, larger buffer widths tend to be most closely correlated with wildlife habitat functions; findings from previous studies range in some cases up to 600 feet for larger mammals and birds (Jones et al., 1988). There is also little research

specifically on effectiveness of riparian buffers in urban environments (Herson-Jones et al., 1995). Buffer distances can be viewed mainly as guidelines, as the literature shows that site-specific factors, including buffer quality, may impact buffer effectiveness along with buffer width (Naiman et al., 1992; Castelle et al., 1994).

**Table 1. Riparian Habitat Area Buffer Recommendations:
Washington Department of Fish and Wildlife**

Stream Type	Recommended Riparian Width
Type 1 & 2, shorelines of statewide significance	250 feet
Type 3 or other perennial or fish bearing streams, 5-20 feet wide	200 feet
Type 3 or other perennial or fish bearing streams, less than 5 feet wide	150 feet
Type 4 and 5 (low mass wasting potential)	150 feet
Type 4 and 5 (high mass wasting potential)	225 feet

Source: OCD, 2002; For definitions of the stream types see the Washington Administrative Code Sections 222-16-030 and 031.

2.4 Stream Management in Urban Environments

Some recent studies have focused on the general effects of urbanization on streams in the lowland Puget Sound region (Booth, 2000; Horner and May, 1999). In these studies, a general trend has emerged that places a greater emphasis on evaluation of buffer effectiveness in the context of watershed processes and landscape-level alterations to watersheds (Roni et al., 2002; Richards et al., 1996).

The loss or disturbance of native riparian area is closely tied to urbanization in a watershed (Horner and May, 1999; Leavitt, 1998). However, water quality and the amount of impervious area have also been associated with stream degradation and impacts to native riparian areas. The adverse impacts of impervious area and water quality functions, which can include alteration of stream hydrology and degradation of water quality, are compounded by degradation of riparian areas (Bledsoe and Watson, 2001; May et al., 1997a).

Land uses, such as high-density residential development or commercial development, located adjacent to riparian areas can result in greater impacts than lower density single-family residential uses because of factors such as greater impervious surface and greater potential for human intrusion into the buffer (Pitt et al., 1986). In most urban areas, prescriptive buffers may not be adequate to maintain stream or riparian functions because most of the functions of buffers have been compromised by past land use actions. For example, protection or restoration of the natural large woody debris recruitment function of riparian areas is difficult in areas that lack mature forested streamside vegetation (Larson, 2000). Watershed-based strategies that address hydrology and water quality in addition to riparian area width and quality may also be helpful to successfully address management of streams (Booth, 2000; Horner and May, 1999). When applied in the

context of a basin-wide change, these strategies, which may include stormwater management and land use controls, may most effectively address protection, enhancement, and restoration of stream systems.

Barriers like culverts and stormwater control structures can inhibit fish migration and prohibit fish from accessing upstream habitats. Barriers that do not prevent the migration of fish may limit many natural processes necessary for salmonid fish production including the natural redistribution of substrate and woody debris. Restoring fish passage is an effective way to increase the quality and accessibility of habitat and can result in relatively large increases in potential fish production at a nominal cost (Roni et al., 2002). Stream channels with high quality habitat (low gradient, high pool frequency, high woody debris recruitment from riparian areas) produce greater benefits (Roni et al., 2002). Land use actions or incentives that address such issues can help conserve and enhance stream functions necessary to maintain and restore populations of anadromous fish.

In urban settings where individual functions and elements of stream habitat are not optimal for salmonids, the combined effect of conditions in a stream basin may allow salmonids to successfully use its habitats. The combined effects of the individual processes that form and support habitat, such as input of organic material and substrate types, may be sufficient to allow some salmonids to live and reproduce. In addition, small changes in stream function (e.g., improving habitat access by removing a fish-passage barrier), in combination with watershed-based restoration strategies, may provide substantial benefits to salmonid populations in urbanized basins.

2.5 Fisheries Habitat and Salmonid Use in the City of Shoreline

The City of Shoreline contains two streams that have documented salmonid use. Another stream has documented anadromous salmonid use, but that documentation is for reaches outside the city limits. Much of this information comes from a series of draft stream basin inventories completed by the City in 2003 (Tetra Tech/KCM, 2003a, b, c, and d). The City contains many small watercourses that are remnant portions of previously existing natural drainage systems that likely contain cutthroat trout. No substantial information exists as to the presence or absence of fish within these smaller drainages.

In general, the geographic location, topography, geology, and level of existing urbanization in the City of Shoreline limit the extent to which its streams can provide the necessary biological requirements for salmonid species and other aquatic organisms.

Boeing Creek has documented salmonid use including Chinook salmon (*Oncorhynchus tshawytscha*), a listed Federal Threatened species; chum salmon (*O. keta*); coho salmon, also a listed Federal Candidate species, (*O. kisutch*); and sea run cutthroat trout (*Salmo clarki*).

McAleer Creek has documented anadromous salmonid use including Chinook salmon (LFPSF), coho salmon, and sockeye salmon (*O. nerka*) (Tetra Tech/KCM, 2003d). Most use occurs outside the city limits, but coho salmon and resident cutthroat trout have been observed in portions of McAleer Creek within the city limits.

Chinook salmon, coho salmon, and sockeye salmon have been documented in Thornton Creek outside of the city limits (WDFW 1998). Resident cutthroat trout are common throughout the Thornton Creek system (Tetra Tech/KCM, 2003d).

Many of the City's smaller streams are likely to contain resident cutthroat trout.

2.6 Functions of Streams and Riparian Areas in the City of Shoreline

The City of Shoreline is in the process of updating their stream inventory. In this inventory, streams are mapped and evaluated as to their ability to perform basic stream functions such as contributing to stream baseflow, water quality improvement, and providing in-stream habitat and structure. Preliminary stream habitat assessments (Tetra Tech/KCM, 2003a, b, and d) rate the stream habitat conditions in the City's streams as poor to fair.

2.7 Data Gaps

Two data gaps were discovered in the preparation of this study. The first is the lack of best available science literature specifically pertaining to urbanizing watersheds and the buffers needed to protect environmentally sensitive areas in the central Puget Sound area specifically, and in the urban Pacific Northwest in general. The second data gap is the lack of information on some aspects of the City's streams and their associated riparian habitat. A draft stream inventory has been prepared for the City that evaluates the streams in the city limits, and is a good start in the assessment of stream conditions, providing information beyond many other jurisdictions in the region. In addition to the stream inventory currently being prepared by the City, an assessment of fish and wildlife use in the City's streams and riparian corridors will be useful in making policy decisions and modifications regarding sensitive areas. In addition, documentation of water quality parameters and buffer quality could be included as part of this background documentation.

3 WETLANDS AND WETLAND BUFFERS

This section briefly summarizes some of the pertinent scientific literature for wetlands and wetland buffers. This section also builds on the existing information regarding wetlands in the City by summarizing additional sources pertaining to wetland functions and values.

Wetlands and their buffers provide important functions and values for both the human and biological environment. These functions include control of hydrology, improvement of water quality, contribution to stream base flow and groundwater recharge, production of nutrients, and provision of wildlife habitat. These functions are discussed in more detail below.

Wetlands are also valued for social and economic values, including their recreational and educational value, and the role they play in mitigating flooding and its associated health and safety concerns.

3.1 Wetland Definition

Wetlands are formally defined by the U.S. Army Corps of Engineers (Corps), the Environmental Protection Agency (EPA), the Washington Shoreline Management Act (SMA) (1971) and the Washington State Growth Management Act (GMA) (1992) as:

... those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas (Federal Register, 1982, 1986).

In addition, the Washington Shoreline Management Act definition and the GMA definition add:

Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990 that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificially created wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.

This same definition of wetland is used in the Washington State Wetlands Identification and Delineation Manual (Ecology, 1997).

Wetlands are typically rated based on size and habitat, and on their relative functions and values. In the State of Washington, the Department of Ecology (Ecology) has developed a wetland rating system for ranking wetlands according to their relative importance. This rating system is outlined in the *Washington State Wetland Rating System for Western Washington* (Publication No. 93-74, Ecology, 1991). Ecology is currently re-evaluating the wetland rating system for western Washington and will be updating this system in the near future.

3.2 Wetland Functions and Values

Wetlands are integral parts of the natural landscape. Their “functions and values” to both the environment and to the general public depend on several elements including their size and location within a basin, as well as their diversity and quality. While each wetland provides various beneficial functions, not all wetlands perform all functions, nor do they perform all functions equally well (Novitski et al., 1995).

Several studies have found that wetland functions and values are compromised by urbanization (Azous and Horner, 2001; Mitsch and Gosselink, 2000; Castelle et al., 1992a; May et al., 1997a; Booth, 2000; City of Portland, 2001). In urban settings individual functions of wetlands may not be optimal. For example, wetlands can provide significant stormwater control, even if they are degraded and comprise only a small percentage of area within a basin. Also, wetlands are important elements of stream systems and fish habitat. Within the urban environment, even degraded wetlands can provide rearing and refuge habitat for fish and other wildlife, along with other benefits that help keep streams healthy.

The functions provided by wetlands and their assigned human-based values have been identified and evaluated through several studies (Cowardin et al., 1979; Adamus et al., 1987; Mitsch and Gosselink, 2000; Hraby, 1995; Reppert et al., 1979; Cooke, 1995.). These functions include:

- Flood water attenuation and flood peak desynchronization;
- Stream base flow maintenance and groundwater support;
- Shoreline protection;
- Water quality improvement;
- Biological support and wildlife habitat; and
- Recreation, education, and open space.

3.3 Functions and Values of Wetland Buffers

Wetland buffers are vegetated upland areas immediately adjacent to wetlands. These areas provide beneficial functions that enhance and protect the many functions and values of wetlands described above. Buffers are particularly important for wildlife because many of the wildlife species associated with wetlands also require terrestrial habitats for their survival. Terrestrial habitats surrounding wetlands also provide a buffer to help mitigate the impacts of urbanization such as runoff from impervious surfaces and human intrusion.

Buffer areas retain sediments, nutrients, pesticides, pathogens, and other pollutants that may be present in runoff (Ecology, 1996). Reduction of sediment and pollutant discharge to wetlands can reduce or prevent alterations to plant and animal communities and degradation of water quality. As a result, buffers also increase the ability of wetlands to further provide sediment and pollutant removal. Upland buffers can infiltrate floodwater, reducing the effects of water level fluctuations in wetlands. Buffers composed of forested and shrub vegetation provide shade and can help maintain water and wildlife habitat quality.

Several literature reviews have been published summarizing the effectiveness of various buffer widths, mainly for riparian areas, but also for wetlands (Castelle et al., 1992a; Castelle and Johnson, 2000; Desbonnet et al., 1994; FEMAT, 1993). Some literature sources indicate that buffer widths beneficial for protecting a given function or group of

functions depend on numerous site-specific factors. These factors include the plant community (species, density, and age), aspect, slope, and soil type, as well as adjacent land use. The body of science also indicates that the appropriate buffer width for a given wetland is specific to the functions to be achieved by that buffer.

Studies of buffers in forest practices and agriculture indicate that buffers ranging from 25 to 100 feet may be adequate to preserve some of the individual beneficial functions of wetlands. When looking at aggregates of wetland functions, other studies indicate that buffers ranging from 100 to 150 feet wide provide most (on the order of 80 percent) of potential functions in most situations.

In some cases, buffers of 200 or 300 feet or more from the aquatic resource have been documented as more appropriate for some wildlife species. Wildlife species that use wetlands for a portion of their life cycle also depend on terrestrial habitats for food, cover, nesting, and/or travel corridors. A variety of wildlife species utilize the edge habitat between wetlands and uplands habitat. Terrestrial habitat areas provide a source of large woody debris used by wildlife for foraging, nesting, and cover (O'Connell, 2000). Buffers also provide separation between wetland habitat and human disturbance. This distance improves the quality of wildlife habitat by lessening the effects of noise, light, and human motion/activity on animal species sensitive to these disturbances.

There are many different variables affecting wetland functions in urban areas, and applying prescriptive buffer standards alone may not be adequate to protect wetland systems. Due to the type and degree of cumulative impacts to urban wetlands (and streams) that have already occurred as a result of high levels of total impervious area and past disturbance to wetlands, it may also be necessary to develop strategies, such as stormwater management, to protect wetlands in the context of basin-wide change (Booth, 2000; Azous and Horner, 2001; Booth and Reinelt, 1993).

3.3.1 Wetland and Buffer Mitigation Success

The Clean Water Act Section 404(b)(1) Guidelines for wetland mitigation require “no net loss” of wetlands by first avoiding, minimizing, rectifying, and reducing impacts to wetlands and their functions. Where impacts cannot be avoided, mitigation may be required. Most wetland mitigation projects in Washington have not been successful for various reasons and have resulted in lost acreage, wetland types, and wetland functions (Castelle et al., 1992b; Washington Department of Ecology, 2001; Mockler et al., 1998). An initial study by Ecology (Castelle et al., 1992b) reported that 50 percent or more of the mitigation projects studied did not meet permit requirements. Common problems included:

- Inadequate design;
- Failure to implement the design;
- Lack of proper maintenance, site infestation by exotic species;
- Grazing by geese or other animals;

- Destruction by floods, erosion, fires, or other catastrophic events;
- Failure to maintain water levels and failure to protect projects from on-site and off-site impacts such as sediment and pollutant loading; and
- Off-road vehicles.

Twenty-four mitigation sites in Washington were analyzed by Ecology and found that although mitigation success has improved in the last 10 years, there is still much room for improvement. The Ecology (2001) study had the following findings:

- Only 29 percent of the projects were achieving all their specified measures;
- Only 84 percent of the total acreage of mitigation was actually established;
- Only 65 percent of the total acreage of lost wetlands was replaced with new wetlands;
- 54 percent of the projects were found to be minimally successful or not successful;
- Wetland enhancement as a type of mitigation performed poorly, compared to creation (50 percent of enhancement sites provided minimal or no contribution to overall wetland functions; 75 percent of sites provided minimal or no contribution to general habitat function); and
- 60 percent of created wetlands were moderately or fully successful and provided significant contribution to water quality and quantity functions.

Ecology (2001) concluded that although better site selection, design and performance standards will help to improve wetland mitigation, consistent follow-up and adaptive management, both to correct problems with current projects and to provide feedback for decision-making on future projects, will result in the greatest overall improvement. Most successful projects had long-term monitoring of at least five years and applied adaptive management strategies. The literature is conflicting on whether on-site mitigation or off-site mitigation can adequately compensate for loss of wetlands and their functions (Erwin, 1990; Castelle et al., 1992a; Kusler, 1992).

Buffer mitigation projects generally are affected by the same factors as wetland mitigation. Success of plant growth in wetland buffers depends on water, nutrient and soil requirements for plants, and controlling the invasion of non-native species (Gwin et al., 1999; Magee et al., 1999). Success of buffer mitigation projects also depends on minimizing human disturbance in the buffer. Buffers in some urban environments, due to close proximity to development, have been altered through dumping of debris, clearing, conversions to residential lawns, and other human disturbances (Desbonnet et al., 1994; Cooke, 1992, Castelle et al., 1992a). However, impacts to buffer areas were less likely in areas where residents had been educated about the value of buffers (Gwin et al., 1999; Kentula, 2002).

3.3.2 Mitigation Ratios

Generally, wetland mitigation is implemented over a larger area than the wetland area adversely affected by a proposed project. Mitigation ratios are typically greater than 1:1 for several reasons, some of which are based on science and others which are policy-driven. Higher ratios act as disincentives to fill wetlands. They also provide an opportunity to achieve certain functions over a larger area, thus compensating for a temporal loss of function from the smaller but presumably more mature impact site. In addition, larger replacement ratios compensate for the inability to achieve full replacement acreage of lost wetlands (Washington Department of Ecology, 2001; Kusler and Kentula, 1990).

Mitigation ratios for wetlands in most local jurisdictions in western Washington currently range between 1:1 and 4:1. However, more information is needed to understand whether lost wetland functions and acreage can be entirely compensated. The previously released Draft OCD Model Critical Areas Ordinance (2002) recommends the following wetland mitigation ratios using Ecology's wetland classification scheme, which is also currently being revised:

- Category I wetlands - 6:1
- Category II wetlands - 3:1
- Category III wetlands - 2:1
- Category IV wetlands - 1.5:1

3.4 Functions and Values of Wetlands and Wetland Buffers in the City of Shoreline

The City of Shoreline is currently in the process of completing inventories of wetlands in its city limits. Further assessment of this data would be beneficial prior to assessing wetland, and in particular wetland buffer functions and values.

The geographic location, topography, geology, and level of existing urbanization in the City of Shoreline limit the extent to which its wetlands can provide the functions described above. However, even in urban settings where individual functions of wetlands are minimal, the combined functions of the wetland systems may provide many of the functional benefits (e.g., stormwater control) not provided by individual wetlands.

3.5 Data Gaps

Two data gaps were discovered in the preparation of this study: the lack of detailed information on the City's wetlands (including wetland functional assessments), and a lack of information on the quality of riparian habitats, and the use of these habitats by wildlife.

4 MARINE/NEARSHORE AREAS

This section briefly summarizes a review of selected relevant science related to marine/nearshore areas adjacent to the City of Shoreline. Three primary sources were utilized to summarize science issues in the nearshore environment for the City including: *Reconnaissance Assessment of the State of the Nearshore Report: Including Vashon and Maury Islands (WRIAs 8 and 9)* (King County DNR, 2001); the Washington Department of Natural Resources (DNR) Shorezone Inventory (WDNR, 2001); and the *King County Nearshore Habitat Mapping Data Report: Picnic Point to Shilshole Marina* (Woodruff et al., 2001).

4.1 Importance of Marine/Nearshore Areas

Estuarine systems include nearshore zones and are one of the most productive natural ecosystems because they act as nurseries for many of the world's fisheries. In addition to providing important habitat for fish and wildlife, marine nearshore areas also contribute to recreation, economic, cultural, and historic values. Understanding of the marine nearshore areas in the region are, however, incomplete due to the complexity of the ecosystem, and the lack of funds to research these areas in greater detail (King County DNR, 2001).

4.2 Marine/Nearshore Areas in the City of Shoreline

The following provides a preliminary description of selected characteristics along the marine nearshore areas of Puget Sound adjacent to the City of Shoreline and summarizes habitats and species that contribute to the City's marine nearshore areas. Information was compiled from existing literature and data sources, and summarizes current and historical information.

4.3 Functions of Nearshore Zones

Puget Sound forms the western boundary of the City of Shoreline. The marine nearshore environment extends approximately 3.5 miles in the city limits and approximately one-half mile along the City's potential annexation area (Point Wells).

Nearshore zones contain many habitat types including eelgrass meadows, kelp forests, flats, tidal marshes, sub-estuaries, sand spits, beaches and backshores, banks and bluffs, and marine riparian vegetation. Nearshore habitat areas provide many critical functions including:

- Habitat for fish/wildlife;
- Nutrient processing;
- Wave and current energy buffering; and
- Foraging, rearing, refuge, migration for fish/wildlife.

4.3.1 Wetlands

Tidal marshes include salt and freshwater habitats that experience tidal inundation (KCDNR, 2001). Several wetlands have been mapped by various sources in the City's shoreline jurisdiction. According to the 1987 National Wetlands Inventory (NWI), the entire marine nearshore area in the city limits and UGA boundary is designated as a Class 1 "estuarine intertidal regular unconsolidated shore" wetland. The King County Sensitive Areas Map Folio (King County, 1990) also identifies intertidal wetlands encompassing the entire nearshore area within the City's boundaries.

One non-tidal wetland has been documented in the City's marine nearshore zone (Tetrattech/KCM, 2003c). This palustrine forested wetland is less than one acre in size and is associated with Barnacle Creek. Priority habitats and species data indicate that a small (less than 1 acre) scrub/shrub wetland associated with Coyote Creek is also located in the marine nearshore zone.

4.3.2 Marine Riparian Zones

Marine riparian vegetation is defined as vegetation overhanging the intertidal zone (King County DNR, 2001). Marine riparian zones function by: protecting water quality; providing wildlife habitat; regulating microclimate; providing shade, nutrients and prey; stabilizing banks; and providing large woody debris (Anchor Environmental and People for Puget Sound, 2002). Vegetated marine riparian zones are lacking within the marine nearshore area in the city limits (WDNR, 2001).

4.3.3 Banks and Bluffs

Banks and bluffs are part of the riparian zone and function by providing sediment to adjacent beaches, habitat to bluff-dwelling animals, rooting area for riparian vegetation, and a source of groundwater seepage to marine waters (King County DNR, 2001). Shoreline development and armoring, vegetation clearing, and changes in hydrology, among others, can adversely impact bluffs. The ShoreZone Inventory (WDNR, 2001) maps indicate that there are moderate height inclined cliffs composed of fines/mud and sand in the areas north of and surrounding Richmond Beach Park.

4.3.4 Beaches and Backshore

Beaches are generally steeper than tidal flats (King County DNR, 2001). Backshore areas are immediately landward of beaches and are zones inundated by storm-driven tides. A typical profile of an undisturbed shoreline in Central Puget Sound would include an upper backshore or storm berm area that collects logs, algae, and other debris during storms (King County DNR, 2001). The intertidal portion of the beach is typically relatively steep and comprised of a mixture of cobbles and gravel in a sand matrix (King County DNR, 2001).

Sediment abundance throughout the City's beaches is characterized predominantly as "moderate." Erosional areas are located south of the Innis Arden Reserve.

4.3.5 Flats

Flats generally include gently sloping sandy or muddy intertidal or shallow subtidal areas (King County DNR, 2001), and are used by juvenile salmonids, shorebirds, and shellfish, among others. Flats are generally located at the mouths of streams where sediment transported downstream is deposited, and in areas of low wave and current energies where longshore waves and currents deposit sediment (King County DNR, 2001). Sand flats are located in the vicinity of the Barnacle and Boeing Creek outlets. Sand and gravel flats are mapped in the Point Wells area, extending to the mouth of Barnacle Creek.

4.3.6 Eelgrass Meadows

The importance of eelgrass has been described in various sources, including the *Reconnaissance Assessment of the State of the Nearshore Environment* (King County DNR, 2001). Eelgrass beds are found in intertidal areas and provide feeding and rearing habitat for a large number of marine organisms. Eelgrass beds have been documented in Puget Sound in the marine nearshore areas within the city limits (Woodruff et al., 2001 and WDNR, 2001). Eelgrass has been documented throughout the entire marine nearshore area of the City of Shoreline, and are most dense north and south of the mouth of Boeing Creek (Woodruff et al., 2001).

4.3.7 Kelp Forests

The function of kelp has been described in *Reconnaissance Assessment of the State of the Nearshore Environment* (King County DNR, 2001). Kelp provides habitat for many fish species, including rockfish and salmonids, potential spawning substrate for herring, and buffering of shorelines from waves and currents, among other functions. A change in kelp distribution may indicate the coarsening of shallow subtidal sediments (such as that caused by erosion related to a seawall) or an increase in nutrient loading (such as from sewage effluent). Kelp is sporadic and limited in its extent throughout the marine nearshore areas within the city limits (Woodruff et al., 2001).

5 REFERENCES

5.1 Cited References

- Adamus, P.R., Clairan, E.J., Smith, R.D., and Young R.E. 1987. *Wetland Evaluation Technique (WET)*. 1987.
- Anchor Environmental, L.L.C. and People for Puget Sound. 2002. *Final Report Northwest Straits Nearshore Habitat Evaluation*. Prepared for Northwest Straits Commission (NWSC). Mount Vernon, WA.
- Azous, A.L. and R.R. Horner, editors. 2001. *Wetlands and Urbanization, Implications for the Future*. Lewis Publishers, New York, NY.
- Bledsoe, B. P., and C.C. Watson. 2001. Effects of Urbanization on Channel Instability. *Journal of American Water Resources Association*. Volume 37.
- Bolton, S. and Shellberg, J. 2001. *Ecological Issues in Floodplains and Riparian Corridors*. Center for Streamside Studies, University of Washington, Seattle, WA.
- Booth, D. B. 2000. *Forest Cover, Impervious Surface Area, and the Mitigation of Urbanization Impacts in King County, Washington*. Prepared for King County Water and Land Resources Division. Seattle, WA.
- Castelle, A.J., A.W. Johnson, and C. Conolly. 1994. Wetland and Stream Buffer Size Requirements - A Review. *J. Environ. Qual.* 23:878-882.
- Castelle, A.J., and A.W. Johnson. 2000. *Riparian Vegetation Effectiveness*. National Council for Air and Stream Improvement Tech. Bull. No. 799.
- Castelle, A.J., C. Conolly, M. Emers, E.D. Metz, S. Meyer, and M. Witter. 1992a. *Wetland Buffers: An Annotated Bibliography*. Publ. 92-11. Adolfson Assoc., for Shorelands and Coastal Zone Manage. Program, Washington Dept. of Ecology, Olympia, WA.
- City of Portland. 2001. *Streamside Science and an Inventory of Significant Riparian and Wetland Resources*. Discussion Draft. City of Portland, Oregon Bureau of Planning, Portland, OR.
- Cooke Scientific Services, Inc. 1995. *Wetland and Buffer Functions Semi-Quantitative Assessment Methodology*.
- Cowardin, L.M., V. Carter, F.C. Golet, and E.T. LaRoe. 1979. *Classification of Wetlands and Deepwater Habitats of the United States*. U.S. Fish and Wildlife Service. Publ. # FWS/OBS-79/31. 131 p.

- Desbonnet, A., P. Pogue, V. Lee, and N. Wolff. 1994. *Vegetated Buffers in the Coastal Zone*. Coastal Resources Center, Rhode Island Sea Grant, Univ. of Rhode Island.
- Erwin, K.L. 1990. *Wetland Evaluation for Restoration and Creation*. In Kusler, J.A., and M.E. Kentula, eds. *Wetland Creation and Restoration: The Status of the Science*. Island Press, Washington, D.C.
- Federal Register. 1982. *Title 33: Navigation and Navigable Waters; Chapter II, Regulatory Programs of the Corps of Engineers*. Volume 47, No. 138, p. 31810. U.S. Government Printing Office, Washington, D.C.
- Federal Register. 1986. 40 CFR Parts 320 through 330: *Regulatory Programs of the Corps of Engineers; Final Rule*. Volume 51, No. 219, pp. 41206-41260. U.S. Government Printing Office, Washington, D.C.
- FEMAT. 1993. *Forest Ecosystem Management: An Ecological, Economic and Social Assessment*. Report of the Forest Ecosystem Management Assessment Team, USDA Forest Service et al., Washington, D.C.
- Gwin, S.E., M.E. Kentula, P.W. Shaffer and U.S. Environmental Protection Agency. 1999. *Evaluating the Effects of Wetland Regulation Through Hydrogeomorphic Classification and Landscape Profiles*. *Wetlands* Vol. 19, No.3, pp. 477-489.
- Herson-Jones, L.M., M. Heraty and B. Jordan. 1995. *Riparian Buffer Strategies for Urban Watersheds*. Metropolitan Washington Council of Governments, Publ. No. 95703, Washington, D.C.
- Horner, R.R., and C.W. May. 1999. *Regional Study Supports Natural Land Cover Protection as Leading Best Management Practice for Maintaining Stream Ecological Integrity*. Comprehensive Stormwater & Aquatic Ecosystem 1999 – Conference Papers Vol. 1:233-247, Feb. 22 – 26, 1999, Auckland, New Zealand.
- Hruby, T., W.E. Cesanek, and K.E. Miller. 1995. *Estimating Relative Wetland Values for Regional Planning*. *WETLANDS*, Vol. 15, pp. 93-107.
- Johnson, A.W., and D. Ryba. 1992. *A Literature Review of Recommended Buffer Widths to Maintain Various Functions of Stream Riparian Areas*. King County Surface Water Management Division, Seattle, WA.
- Jones, J.J., J.P. Lortie, and U.D. Pierce, Jr. 1988. *The Identification and Management of Significant Fish and Wildlife Resources in Southern Coastal Maine*. Maine Department of Inland Fisheries and Wildlife, Augusta, ME. 140 pp.
- Kentula, M.E. 2002. *Tracking Changes in Wetlands and Urbanization: Sixteen Years of Experience in Portland, OR.* US EPA presentation at Urban Wetlands Sustaining Multiple Functions Conference. May 20-21, 2002. Portland State University, Portland, OR.

- King County Department of Natural Resources (KCDNR). 2001. *Reconnaissance Assessment of the State of the Nearshore Report: Including Vashon and Maury Islands (WRIAs 8 and 9)*. Seattle, WA.
- Kusler, J. 1992. *Mitigation Banks and the Replacement of Wetland Functions and Values*. In *Effective Mitigation: Mitigation Banks and Joint Projects In the Context of Wetland Management Plans*. Proceedings from National Wetland Symposium. June 24-27, 1992. Palm Beach Gardens, FL.
- Kusler, J.A., and M.E. Kentula, eds. 1990. *Wetland Creation and Restoration: The Status of the Science*. Island Press, Washington, DC.
- Larson, M. 2000. *Effectiveness of Large Woody Debris in Stream Rehabilitation Projects in Urban Basins*. Center for Urban Water Resources Management, Seattle, WA.
- Leavitt, J. 1998. *The Functions of Riparian Buffers in Urban Watersheds*. Masters Thesis. University of Washington. Seattle, WA.
- Magee, T.K., T.L. Ernst, M.E. Kentula, and K.A. Dwire. 1999. Floristic Comparison of Freshwater Wetlands in an Urbanizing Environment. *Wetlands* Vol. 19, No.3, pp. 517-534.
- May, C.W., R.R. Horner, J.R. Karr, B.W. Mar, and E.B. Welsh. 1997a. Effects of Urbanization on Small Streams in the Puget Sound Lowland Ecoregion. *Watershed Protection Techniques* 2:483-494.
- May, C.W., R.R. Horner, J.R. Karr, B.W. Mar, and E.B. Welsh. 1997b. *Quality Indices for Urbanization Effects in Puget Sound Lowland Streams*. Wat. Res. Tech. Rep 154. Washington Department of Ecology, Olympia, WA.
- Mitsch, W. J. and J.G. Gosselink. 2000. *Wetlands*. 3rd ed. Van Nostrand Reinhold, New York, NY.
- Mockler, A., L. Casey, M. Bowles, N. Gillen, and J. Hansen. 1998. *Results of Monitoring King County Wetland and Stream Mitigations*. King County Department of Environmental Services, King County, WA.
- Naiman, R.J., T.J. Beechie, L.E. Benda, D.R. Berg, P.A. Bisson, L.H. MacDonald, M.D. O'Connor, P.L. Olson, and E.A. Steel. 1992. *Fundamental Elements of Ecologically Healthy Watersheds in the Pacific Northwest Coastal Ecoregion*. In Naiman, R.J., ed. *Watershed Management. Balancing Sustainability and Environmental Change*. Springer-Verlag. New York, New York, NY. 542 p.
- Novitski R.P., D. Smith, and J.D. Fretwell. 1995. *Restoration, Creation and Recovery of Wetlands: Wetland Functions, Values and Assessment*. United States Geological Survey Water Supply Paper 2425.

- O'Connell, M.A. J.G. Hallett, S.D. West, K.A. Kelsey, D.A. Manuwal, and S.F. Pearson. 2000. *Effectiveness of Riparian Management Zones in Providing Habitat for Wildlife*. Submitted to the LWAG, Timber Fish and Wildlife Program. Cheney, WA.
- Pitt, D.G., W.G. Gould, and L. LaSota. 1986. *Landscape Design to Reduce Surface Water Pollution in Residential Areas*. Water Resources Information Bulletin No. 5. Univ. of Maryland. Cooperative Extension Service.
- Reppert, R.T., W. Sigles, E. Stakhiv, L. Messman, and C. Meyers. 1979. *Wetlands Values: Concepts and Methods for Wetlands Evaluation*. Res. Rpt. 79-R1. Inst. for Water Resources, U.S. Army Corps of Engineers, Fort Belvoir, VA.
- Richards, C., L.B. Johnson, and G.E. Host. 1996. Landscape-Scale Influences on Stream Habitats and Biota. *Can. J. Fish Aquat. Sci.* 53:295-311.
- Roni, P., T.J. Beechie, R.E. Bilby, F.E. Leonetti, M.M. Pollock, and G.R. Pess. 2002. A Review of Stream Restoration Techniques and a Hierarchical Strategy for Prioritizing Restoration in Pacific Northwest Watersheds. *North American Journal of Fisheries Management*. 22:1-20.
- Tetra Tech/KCM, Inc. 2003a. *Boeing Creek Basin Characterization Report*. Prepared for the City of Shoreline, WA.
- Tetra Tech/KCM, Inc. 2003b. *City of Shoreline Stream Inventory and Assessment*. Prepared for the City of Shoreline, WA.
- Tetra Tech/KCM, Inc. 2003c. *City of Shoreline Wetland Inventory and Assessment*. Prepared for the City of Shoreline, WA.
- Tetra Tech/KCM, Inc. 2003d. *Middle Puget Sound Basin Characterization Report*. Prepared for the City of Shoreline, WA.
- Washington Department of Ecology. 1991. *Washington State Wetlands Rating System: Western Washington*. Publication 93-074, Olympia, WA.
- Washington Department of Ecology. 1996. *Water Quality Guidelines for Wetlands: Using the Surface Water Quality Standards for Activities Involving Wetlands*. Publication 96-06, Olympia, WA.
- Washington Department of Ecology. 1997. *Washington State Wetlands Identification and Delineation Manual*. Publication 96-94, Olympia, WA.
- Washington Department of Ecology. 2001. *Washington State Wetland Mitigation Evaluation Study Phase 2: Success*. Publication 01-06-021. Olympia, WA.
- Washington Department of Fish and Wildlife. 1998. *1997 Washington Salmonid Stock Inventory. Appendix Bull Trout and Dolly Varden*. Olympia, WA.

Washington Department of Natural Resources (WDNR). 2001. *Washington State ShoreZone Inventory*. Nearshore Habitat Program, Washington State Department of Natural Resources. Olympia, WA.

Washington Office of Community Development (OCD). 2002. *Model Code Recommendations for Designating and Protecting Critical Areas, First Edition, 2nd Draft*. Prepared by Berryman & Henigar Inc., Adolfson Associates Inc., and GeoEngineers, Inc. OCD, Olympia, WA.

Williams, R.D., and E.D. Lavey. 1986. *Selected Buffer References*. Water Quality and Watershed Research Laboratory, Durant, OK.

Woodruff, D.L., P.J. Farley, A.B. Borde, J.S. Southard, and R.M. Thom. 2001. *King County Nearshore Habitat Mapping Data Report: Picnic Point to Shilshole Marina*. Prepared for King County Department of Natural Resources, Seattle, WA.

5.2 Other References

Adolfson Associates. 1999a. *Final Environmental Impact Statement Volume 1: Shoreview Park Capital Project*. Prepared for the City of Shoreline, WA.

Adolfson Associates. 1999b. *Final Environmental Impact Statement Volume 2: Shoreview Park Capital Project*. Prepared for the City of Shoreline, WA.

Battelle Marine Sciences Laboratory. 2001. *King County Nearshore Habitat Mapping Data Report: Picnic Point to Shilshole Marina*. Prepared for the King County Department of Natural Resources, Seattle, WA.

Benfield, E. F. and J. R. Webster. 1985. Shredder abundance and leaf breakdown in an Appalachian Mountain stream. *Freshwater Biology* Volume 15.

Bjorn, T.C. and D.W. Reiser. 1991. *Habitat Requirements of Salmonids in Streams*. In Meehan, W.R., ed. *Influences of Forest and Rangeland Management on Salmonid Fishes and their Habitats*. American Fisheries Society Special Publication 19.

Booth, D.B. 1991. Urbanization and the Natural Drainage System—Impacts, Solutions, and Progress. *Northwest Environmental Journal* 7(1): 93-118.

Booth, D.B. and L. Reinelt. 1993. *Consequences of Urbanization on Aquatic Systems: Measured Effects, Degradation Thresholds, and Corrective Strategies*. Pp. 540-550 In *Proceedings Watershed '93 A National Conference on Watershed Management*. March 21-24, 1993. Alexandria, VA.

Brazier, J.R. and G.W. Brown. 1973. *Buffer Strips for Stream Temperature Control*. Research Paper No. 15, Forest Research Lab, Oregon State Univ., Corvallis, OR.

- Castelle, A.J., C. Conolly, M. Emers, E.D. Metz, S. Meyer, M. Witter, S. Mauermann, T. Erickson, and S.S. Cooke. 1992. *Wetland Buffers: Use and Effectiveness*. Publ. 92-10. Adolfson Assoc., for Shorelands and Coastal Zone Manage. Program, Washington Dept. of Ecology, Olympia, WA.
- City of Shoreline. 1998. *Final Shoreline Comprehensive Plan*. Adopted November 23, 1998. Shoreline, WA.
- City of Shoreline. 2001. *Comprehensive Plan 2001: Representation of Official Comprehensive Plan Land Use Map Adopted by City Ordinance No. 292*. Shows amendments through July 26, 2001. Shoreline, WA.
- City of Shoreline. 2002. *Zoning, 2002: Representation of Official Zoning Map Adopted by City Ordinance No. 292*. Shows amendments through November 13, 2001. Shoreline, WA.
- City of Shoreline. 2003. *Shoreline Municipal Code*. Current through Ordinance 329, passed April 28, 2003. Shoreline, WA.
- Cooke Scientific Services, Inc. 1992. *Wetland Buffers - A Field Evaluation of Buffer Effectiveness in Puget Sound*. Prepared for Washington Department of Ecology, Olympia, WA.
- Corbett, E.S. and J.A. Lynch. 1985. *Management of Streamside Zones on Municipal Watersheds*. pp. 187-190 in R. R. Johnson, C.D. Ziebell, D.R. Patton, P.F. Folliott, and R.H. Hamre (eds.), *Riparian Ecosystems and their Management: Reconciling Conflicting Uses*. First North American Riparian Conference, April 16-18, 1985, Tucson, AZ.
- Federal Emergency Management Agency (FEMA). 1995. *Q3 Flood Data, depicting Flood Insurance Rate Map, King County, Washington*.
- Gregory, S.V. 1980. *Effects of Light, Nutrients, and Grazing on Periphyton Communities in Streams*. Ph.D. thesis. Oregon State University, Corvallis, OR.
- Gregory, S.V., F.J. Swanson, W.A. McKee, and K.W. Cummins. 1991. An Ecosystem Perspective of Riparian Zones: Focus on Links Between Land and Water. *BioScience* 41:540-551.
- Horner, R.R., and C.W. May. 2000. *Watershed Urbanization and the Decline of Salmon in Puget Sound Streams*. Center for Urban Water Res. Management, University of Washington, Seattle, WA.
- King County. 2003. *Geographic Information Systems (GIS) Data*.
- King County. 1990. *King County Sensitive Areas Map Folio*.

- Knutson, K.C. and V.L. Naef. 1997. *Management Recommendations for Washington's Priority Habitats: Riparian*. Washington Department of Fish and Wildlife, Olympia, WA.
- Lamb, J. C. 1985. *Water Quality and Its Control*. John Wiley and Sons. New York, NY.
- Lemberg, N.A., M.F. O'Toole, D.E. Pentilla, and K.C. Stick. 1997. *Washington State Department of Fish and Wildlife, 1996 Forage Fish Stock Status Report. Stock Status Report No. 98-1*. Washington State Department of Fish and Wildlife, Olympia, WA.
- Lynch, J.A., E.S. Corbett, and K. Mussallem. 1985. Best Management Practices for Controlling Nonpoint-Source Pollution on Forested Watersheds. *J. Soil Wat. Conserv.* 40:164-167.
- McDade, M.H., F.J. Swanson, W.A. McKee, J.F. Farnklin, and J. Van Sickle. 1990. Source Distances for Coarse Woody Debris entering Small Streams in Western Oregon and Washington. *Can. J. For. Res.* 20:326-330.
- McMillan, A. 2000. *The Science of Wetland Buffers and Its Implications for the Management of Wetlands*. Masters Thesis, The Evergreen State College and Washington Department of Ecology, Olympia, WA.
- Meehan, W.R., F.J. Swanson, and J.R. Sedell. 1977. *Influences of Riparian Vegetation on Aquatic Ecosystems with Particular Reference to Salmonid Fishes and Their Food Supply*. USDA Forest Service General Technical Report MR-43. Contributed paper, Symposium on the Importance, Preservation and Management of the Riparian Habitat, July 9, 1977, Tucson AZ.
- Murphy, M.L. and K. V. Koski. 1989. Input and Depletion of Woody Debris in Alaska Streams and Implications for Streamside Management. *N. Am. J. Fish. Mang.* 9:427-436.
- National Marine Fisheries Service. 1996. *Making Endangered Species Act Determinations of Effect for Individual or Grouped Actions at the Watershed Scale*. NMFS Environmental and Technical Services Division.
- Newbold, J.D., D.C. Erman, and K.B. Roby. 1980. Effects of Logging on Macroinvertebrates in Streams With and Without Buffer Strips. *Can. J. Fish Aquat. Sci.* 37:1076-1085.
- Nightingale, B. and C. Simenstad. 2001. *Overwater structures: Marine issues*. Prepared for Washington Department of Fish and Wildlife, Washington Department of Ecology, and Washington Department of Transportation. University of Washington. Seattle, WA.
- O'Toole, M. 1995. *Puget Sound Herring: A Review*. In Proceedings of Puget Sound Research. 1995. pp. 849-854. Puget Sound Water Quality Authority, Seattle, WA.

- O'Neil, T. A., D. H. Johnson, C. Barrett, M. Trevithick, K. A. Bettinger, C. Kiilsgaard, M. Vander Heyden, E. L. Greda, D. Stinson, B. G. Marcot, P. J. Doran, S. Tank, and L. Wunder. *Matrixes for Wildlife-Habitat Relationship in Oregon and Washington*. Northwest Habitat Institute. 2001. In D. H. Johnson and T. A. O'Neil (Manag. Dirs.) *Wildlife-Habitat Relationships in Oregon and Washington*. Oregon State University Press, Corvallis, OR.
- Reiser, D.W. and T.C. Bjornn. 1979. *Habitat Requirements of Anadromous Salmonids*. USDA Forest Service. Pacific Northwest Forest and Range Experiment Station. General Technical Report PNW-96.
- Roby, K.B., D.C. Erman, and J.D. Newbold. 1977. *Biological Assessment of Timber Management Activity Impacts and Buffer Strip Effectiveness on National Forest Streams of Northern California*. USDA - Forest Service, California Region.
- Rudolph, D.C., and J.G. Dickson. 1990. Streamside Zone Width and Amphibian and Reptile Abundance. *The Southwestern Naturalist* 35:472-476.
- Shirvell, C. S. 1990. Role of instream rootwads as juvenile coho salmon (*Oncorhynchus kisutch*) and steelhead trout (*O. mykiss*) cover habitat under varying streamflows. *Canadian Journal of Fisheries and Aquatic Science*. Volume 47.
- Steinblums, I., H. Froehlich, and J. Lyons. 1984. *Designing Stable Buffer Strips for Stream Protection*. U.S. Forest Service, 2520 Watershed Protection and Management.
- Swales, S. and C. D. Levings. 1989. Role of off-channel ponds in the life cycle of coho salmon (*Oncorhynchus kisutch*) and other juvenile salmonids in the Coldwater River, British Columbia. *Canadian Journal of Fisheries and Aquatic Science*. Volume 46.
- Thomas, R. E., J. A. Gharrett, M. G. Carls, S. D. Rice, A. Moles, and S. Korn. 1986. Effects of fluctuating temperature on mortality, stress, and energy reserves of juvenile coho salmon. *Transactions of the American Fisheries Society*. Volume 115.
- United States Department of Agriculture, Natural Resources Conservation Service (USDA SCS). 1973. *King County Soil Survey*.
- United States Department of Agriculture, Natural Resources Conservation Service (USDA SCS). 1983. *Snohomish County Soil Survey*.
- United States Department of the Interior (USDI). 1987a. *National Wetlands Inventory, Edmonds West, Washington 7.5-minute USGS Quadrangle*.
- United States Department of the Interior (USDI). 1987b. *National Wetlands Inventory, Seattle North, West, Washington 7.5-minute USGS Quadrangle*.

- United States Department of the Interior Fish and Wildlife Service (USFWS). 1998. *A Framework to Assist in the Making of Endangered Species Act Determinations of Effect for Individual or Grouped Actions at the Bull Trout Subpopulations Watershed Scale (Draft)*. Washington, DC.
- Van Sickle, J. and S.V. Gregory. 1990. Modeling Inputs of Large Woody Debris to Streams from Falling Trees. *Can. J. For. Res.* 20:1593-1601.
- Vannote, R.L., G.W. Minshall, K.W. Cummins, J.R. Sedell, and C.E. Cushing. 1980. The River Continuum Concept. *Canadian Journal of Fisheries and Aquatic Science* 37:130-137.
- Washington Department of Agriculture Pesticide/ESA Task Force. 2001. *A Process for Evaluating Pesticides in Washington State Surface Waters for Potential Impacts to Salmonids*. WSDA Publication No. 057, Olympia, WA.
- Washington Department of Fish and Wildlife (WDFW) and Western Washington Treaty Indian Tribes. 1994. *1992 Washington State Salmon and Steelhead Stock Inventory*. Olympia, WA.
- Washington Department of Fish and Wildlife (WDFW). 1997. *Wild Salmonid Policy. Washington Department of Fish and Wildlife Final Environmental Impact Statement*. Washington Department of Fish and Wildlife. Olympia, WA.
- Washington Department of Fish and Wildlife (WDFW). 2003. *Priority Habitats and Species, "StreamNet", and Marine Resources Species databases*. Olympia, WA.
- Williams, R.W., R.M. Laramie, and J.J. James. 1975. *A Catalog of Washington Streams and Salmon Utilization: Volume 1, Puget Sound Region*. Washington State Department of Fisheries. Olympia, WA.
- Williams, R.W., R.M. Laramie, and J.J. James. 1975. *A Catalog of Washington Streams and Salmon Utilization, Volume 1, Puget Sound Region*. Washington Department of Fisheries. Olympia, WA.
- Wong, S.L., and R.H. McCuen. 1982. *The Design of Vegetative Buffer Strips for Runoff and Sediment Control*. A Technical Paper Developed as Part of a Study of Stormwater Management in Coastal Areas Funded by Maryland Coastal Zone Management Program.
- Wydoski, R.S. and R.R. Whitney. 1979. *Inland Fishes of Washington*. University of Washington Press. Seattle, WA.

5.3 Web Sites

King County Department of Natural Resources Website. *Beach Assessment Program*. Available online at: <http://dnr.metrokc.gov/wlr/waterres/beaches/bmain.htm> (accessed September 2003).

Washington Department of Ecology. 2001. *Focus: Riparian Areas*. Washington Department of Ecology. Available online at: <http://www.ecy.wa.gov/pubs/0010023.pdf>

Washington State Department of Ecology (Ecology). *Digital Coastal Zone Atlas*. Available online at: http://www.ecy.wa.gov/programs/sea/SMA/atlas_home.html (accessed September 2003).

Washington Department of Ecology. *Final 1998 Section 303(d) List – WRIA 8*. Available online at: <http://www.ecy.wa.gov/programs/wq/303d/1998/wrias/wria8.pdf> (accessed September 2003).

Washington State Department of Health Website. *Recreational Shellfish Beach Closures*. Available online at: <http://www.doh.wa.gov/> (accessed September 2003).

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION SUMMARY MINUTES OF REGULAR MEETING

January 20, 2005
7:00 P.M.

Shoreline Conference Center
Board Room

PRESENT

Chair Harris
Vice Chair Piro (arrived at 7:10 p.m.)
Commissioner Sands
Commissioner Kuboi
Commissioner Phisuthikul
Commissioner MacCully
Commissioner Hall
Commissioner McClelland
Commissioner Broili

STAFF PRESENT

Tim Stewart, Director, Planning & Development Services
Andrea Spencer, Senior Planner, Planning & Development Services
Matt Torpey, Planner II, Planning & Development Services
Ian Sievers, City Attorney
Jessica Simulcik, Planning Commission Clerk

Chair Harris welcomed Mike Broili as the new Planning Commissioner. He also welcomed the new Planning Commission Clerk, Jessica Simulcik.

1. CALL TO ORDER

The regular meeting was called to order at 7:05 p.m. by Chair Harris, who presided.

2. ROLL CALL

Upon roll call by the Commission Clerk, the following Commissioners were present: Chair Harris and Commissioners Sands, Kuboi, Phisuthikul, Hall, McClelland, MacCully and Broili. Vice Chair Piro arrived at 7:10 p.m.

3. APPROVAL OF AGENDA

The Commission unanimously approved the agenda as written.

4. APPROVAL OF MINUTES

The Commissioner approved the November 4, 2004 minutes as drafted and the November 18, 2004 minutes as amended.

5. GENERAL PUBLIC COMMENT

Janet Way, 940 North 147th Street, Shoreline, indicated that she was present to represent the Sno-King Environmental Council, the Thornton Creek Legal Defense Fund and the Paramount Park Neighborhood Group. She referred to Page 4 of the Commission minutes of November 18th, in which Mr. Stewart pointed out that the Stormwater Management Plan and the Comprehensive Plan Update policies could have an influence on the Critical Areas Ordinance, which should be consistent with the policy direction provided by the Commission. Ms. Way said her hope is that the Commission provided clear policy direction to staff during their review of the Comprehensive Plan and Master Plans before they were forwarded to the City Council for review. She said she is not sure the policy direction has been made clear in the record.

Again, Ms. Way referred to Page 4 of the minutes of November 18th, in which the consultant advised that the Growth Management Act (GMA) states that counties and cities shall give special consideration to conservation and protection measures necessary to preserve and enhance anadromous fisheries. Then the consultant raised a question about the exact meaning of the word "shall." However, she did not feel the question was resolved satisfactorily.

Next, Ms. Way referred to Page 10 of the November 18th minutes. The minutes show Chair Harris inquired how they could get more individuals to participate in the critical areas ordinance discussion. Ms. Way agreed that it would be good for the City to do more outreach to the community. Now that the actual draft Critical Areas Ordinance is available for public's review, she assured the Commission that there would be more people coming to the hearings. She said she would appreciate City efforts to get the word out to the citizens.

Ms. Way referred to an article from *THE SEATTLE POST INTELLIGENCER*, dated January 19, 2005. The article was titled, "*The State of Puget Sound Troubling.*" The article stated that development throughout the region is booming, and this could have a negative impact on marine wildlife. The authors of the report, the Puget Sound Action Team, concluded that when it rains a record volume, unfiltered stormwater rushes down gutters, scouring streambeds and dumping dirt, oil, pesticides and animal waste into creeks and rivers and ultimately the Sound. The authors further stated that industrial chemicals, even those banned decades ago, are still hammering the ecosystem, and salmon runs are struggling to survive. The article concludes by stating that although there has been great progress in some areas in the Sound, the scale and pace of the improvements is not yet equal to the pace of the change and decline. She asked that this article be entered into the City's Critical Area Ordinance Update record.

Ms. Way referred to a new study the City commissioned regarding Thornton Creek and the fish passage that flows under the freeway. She asked that the City spend as much time and money trying to back up fish and wildlife as they do trying to undermine the opinion of the Department of Fish and Wildlife. She asked that the Commission urge the City to do everything in its power to protect the ecosystem. She noted that there was confirmed Chinook sightings in the south branch of Thornton Creek, about ten

blocks from Northgate, as a result of the City of Seattle fixing the fish passage barrier on Lake City Way. The Department of Fish and Wildlife has reiterated that the passage under I-5 is adequate right now for the fish to get to Thornton Creek, and they have listed improvement to this fish passage as a high priority for the Department of Transportation.

6. STAFF REPORTS

Workshop to Discuss Critical Areas Ordinance Update

Mr. Stewart reminded the Commission that the State has mandated that cities update their Critical Areas Ordinance and incorporate or include best available science as they review their policies and regulations. He reported that the preliminary draft Critical Areas Ordinance Update has been released to the public and Commissioners. It was forwarded to the State in order to meet the 60-day comment period requirement. It can also be found on the City's website. Invitations have been sent to a number of groups, inviting them to meet with City staff to further discuss their issues of concerns. He said staff anticipates they will be working with various groups, including State resource agencies, over the next few weeks in preparation for the scheduled Planning Commission public hearing.

Matt Torpey asked that the Commissioners take notes during his presentation and ask their questions after he has completed the staff report. He reviewed each of the changes that are being proposed in the draft ordinance as follows:

- **Page 32 – Critical Areas Definition:** In order to mesh with the GMA, the proposed definition has been narrowed down to just five recognized categories (streams and wetlands, geologic hazard areas, fish and wildlife habitat conservation areas, frequently flooded areas, and areas of aquifer recharge). Staff believes that the three deleted categories could be wrapped into the other five listed categories.
- **Page 33 – Hazardous Trees Definition:** A definition of hazardous trees was added to the ordinance. The proposed definition was borrowed from King County's Critical Areas Ordinance and identifies a hazardous tree as a tree that would cause harm or damage to a structure, road or access. As per the proposed language, removal of hazardous trees must be consistent with tree conservation, permitting and site restoration requirements, and it must be replaced with another healthy tree.
- **Page 34 – Reasonable Use Definition:** Staff is recommending that the last sentence of the current reasonable use definition be eliminated, which is consistent with a request from a number of citizens.
- **Page 34 – Stream Definition:** The proposed change would add the word "open" to describe a watercourse. He explained that in the current definition, pipes and closed systems are not considered streams. The change would clarify this issue. In addition, the definition further clarifies that channels or beds do not necessarily need to have water in them year round in order to qualify as a Type IV Stream.

- **Page 39 – Section 20.80.025.D:** This is a duplicate section, staff is proposing that it be deleted from this section of the code.
- **Page 41 – Section 20.80.030.E:** The language in this section is also stated in the wetland definition. To avoid redundancy, staff is recommending that it be deleted.
- **Page 42 – Section 20.80.030.F:** This section exempts critical area requirements for Type IV Wetlands (the lowest class of wetlands in the City) that can meet the 1,000 square foot requirement or are smaller than 2,500 square feet. The proposed change would make the exemption much stricter than many jurisdictions, where the average number is 3,000 square feet for a standard exemption.
- **Page 42 – Section 20.80.030.H:** Staff is proposing this change to include an exemption that would allow native planting to occur in a wetland or stream buffer without a critical areas alteration permit.
- **Page 42 – Sections 20.80.030.I and 20.80.030.J:** This section allows an exemption for people who wish to top, trim, or thin trees on properties in order to preserve or enhance views. He noted, however, the requirement that no net loss of the function and values of the critical areas could take place. He advised that the current code allows absolutely no action on trees in critical areas, which looks good on the surface. But in some situations it might be good to clear out the non-native species and plant native species as per a qualified professional's recommendation.

Mr. Stewart advised that, along with the hazardous tree amendment, there have been code enforcement actions in Innis Arden as a result of about 100 trees being removed from the critical areas of the reserve under the hazardous tree provision. Staff has attempted to formulate a package that would allow for view preservation and enhancement if a critical area stewardship plan were developed. This language was built on a model from King County's agriculture and forest preservation plans. He further advised that staff believes the proposed change would tighten the hazardous tree exemption and make it more difficult to use. It would also require replacement of any hazardous trees that are removed.

Page 44 – Section 20.80.030.P – Mr. Stewart advised that this change would allow for the removal of up to six significant trees on a parcel in a critical area if all of its functions and values could be preserved.

- **Page 46 – Section 20.80.050:** Notice to title is required for any permit that involves a critical area on the property. However, most of these projects would not have an impact to the critical area. The proposed language would eliminate the ambiguity between a required tract and a simple notice to title for Type A Actions.
- **Page 47 – Section 20.80.050:** These changes are related to "notice to title" for larger applications such as plats, short plats, commercial, etc. If a critical area is located on the site, an applicant would be required to place the critical area in a separate tract.

- **Page 48 – Section 20.80.080:** The purpose of this proposed change is to clear up the sequence of requirements for mitigation of impacts to a critical area. The order of preference for the requirements is listed on Page 49 (Items A – E). In addition, the enforcee would be required to consider these actions when going through mitigation.
- **Page 50 – Section 20.80.210.A:** The proposed change would break out the three types of geological hazards that are identified in the Critical Areas Ordinance. These items are listed as Items 1 – 3 (erosion hazard, landslide hazard, seismic hazard).
- **Page 51 – Section 20.80.220.A:** This proposed change is a housekeeping measure that would eliminate the “class” structure. Instead, titles have been assigned to the types of geologic hazard. A moderate hazard would have a 15 to 40 percent slope, a high hazard would have a 15 to 40 percent slope with underlying soils consisting largely of silt and clay, and a very high hazard would have a slope of greater than 40 percent.
- **Page 52 – Section 20.80.220.D:** Staff is proposing that this section be eliminated since the ordinance already states that areas of greater than 40 percent slope are considered steep slopes.
- **Page 53 – Sections 20.80.230.C and 20.80.230.D:** This proposed change establishes a standard buffer of 50 feet for geologically critical areas, which is an industry standard and backed by best available science. The 50-foot buffer could be reduced at the recommendation of a geotechnical engineer. He explained that in almost any case where an applicant would propose a reduction in buffer, the City would do its own independent review of the buffer reduction.

Mr. Stewart noted that language in **Section 20.80.230.C** was also added to indicate that larger buffers may be imposed as required by a geotechnical report to eliminate or minimize the risk of people and property.

Commissioner Phisuthikul inquired if staff would provide a critical areas map of the City. Mr. Stewart said that, right now, the staff has been using the King County overlay maps that were published a long time ago. Work is in progress to create new maps based upon the stream and wetland inventory, updating the landslide areas, and other hazard areas. This effort would follow on the tail of the Critical Areas Ordinance. Right now, staff has map information to use, but the formal adoption of a critical areas map is an important step.

Commissioner Phisuthikul said it is important for the staff and Commission to know where the critical areas are located. Commissioner Sands suggested that it would be important for the Commission to have these maps available before they make a recommendation to the City Council on the Critical Areas Ordinance update. He explained that when the provisions of the ordinance are applied to the community at large, it could include the entire City. Or they could find that application of the ordinance does not include enough of the critical areas. The Commission must have maps to identify the critical areas before making a determination as to whether the ordinance is too restrictive or not restrictive enough. Mr. Stewart said staff would prepare a response regarding the mapping of critical areas.

Commissioner McClelland said all municipalities in the State have been given a mandate to apply best available science guidelines and adopt ordinances. The presumption is that the data and maps would come by way of development applications whereby the applicants would pay for the studies to be done. Over a period of time, a jurisdiction would accumulate a body of information. It would be extremely expensive for a jurisdiction to do their own mapping of critical areas, and she doubts staff would be able to provide accurate maps prior to the adoption of the Critical Areas Ordinance.

- **Pages 57 and 58 – Section 20.80.040.F:** Staff is proposing that this section be split up and placed in different sections of the Code. Item 1 was moved to Page 54. Item 2 could be eliminated since it relates to the “notice to title” requirement,” which was addressed earlier in the ordinance. Item 3 requires posting of bond and could be deleted since it is listed in the mitigation standards.
- **Page 60 – Section 20.80.260.A:** Staff is proposing to add the word “critical” as a type of species to the Federal threatened, endangered and priority species. Instead of using the words “identified by the Department of Fish and Wildlife,” staff is proposing to use the term “listed by the Department of Fish and Wildlife.”
- **Page 60 – Section 20.80.270:** The proposed change would add the Washington Department of Fish and Wildlife and the Washington Department of Ecology for assistance in helping the City establish the fish and wildlife habitat conservation areas.
- **Page 61 – Section 20.80.270.A:** This proposed change would eliminate the word “documented” since the presence of the species listed by the Federal or State Government is sufficient enough for the City to establish a fish and wildlife habitat area.
- **Page 64 – Section 20.80.310.A:** Previously, there was no definition for the term “wetlands.” The proposed definition would make it clear about what areas would be regulated. The second paragraph defines exactly what an artificially created wetland is. He recalled that, previously, the City had an exemption for alteration of artificially created wetlands, so it is important that a definition be provided in the ordinance.
- **Page 67 – Section 20.80.330.B:** Staff has proposed increases to both the standard and the minimum buffer area requirements. The proposed numbers were obtained from the WRIA 8 recommendations and are based on best available science. Mr. Stewart noted that the proposed buffers would be consistent with King County’s standards.
- **Page 67 – Section 20.80.330.C:** This language was changed to clarify that wetland buffers must be protected in one of two ways. He noted that in Items 1.b and 1.c, the word “or” was eliminated so there would no longer be options for mitigation. An applicant would be required to do all of the items. In Item 2, the words, “that will result in equal or greater wetland functions” were added, and this is consistently done throughout the draft ordinance. Any action must provide at least maintain the existing function or enhance the function before any proposed alteration would be allowed.

- **Page 68 – Section 20.80.330.D:** Mr. Stewart explained that the Aegis lawsuit was partly based upon a dispute of classification for Peverly Pond. One view was that Peverly Pond was a wetland and should be regulated as such. Another view was that it was a stream and should be regulated as such. Under the current ordinance, streams have larger buffer requirements, so there is an incentive for environmental advocates to argue for classification as a stream, and there is incentive for the property owner to argue as a wetland. Staff considered the difference in function and value between a stream and a wetland, and they couldn't come up with any quantifiable difference. The way staff is proposing to bridge the gap between streams and wetlands is to add language stating that where a wetland has salmonid fish use, a corresponding wetland or stream buffer, whichever is greater, shall be established. He noted that the buffers for streams correspond in type, generally, to the buffers for wetlands.
- **Page 69 – Section 20.80.330.F:** The change made to Item 1 includes the statement that the structure and function must be equivalent to or greater than the structure and function before averaging. Item 3 sets the minimum and maximum requirements for buffer averaging. The reference to ten feet was eliminated because the smallest buffer requirement would be 25 feet.
- **Page 74 – Section 20.80.350.D.3:** This section identifies the wetland replacement ratio requirements. He noted that the numbers were dramatically increased consistent with the Department of Ecology's recommendations.

Commissioner Sands referred to the wetland creation replacement ratio for a Type IV Wetland, which he assumes would apply if a wetland would be destroyed somewhere else. He said his interpretation is that the newly created replacement wetland would have to be 25 times the size of the one that was destroyed. However, enhancing an existing Type IV wetland would require a 6:1 ratio. Mr. Stewart explained that if an applicant were seeking to disturb 10 square feet of a wetland, he/she would be required to enhance 60 square feet of the existing wetland. Commissioner Sands asked how an applicant could be required to enhance a wetland that does not need to be enhanced. Mr. Torpey answered that this concern does not exist in urban wetlands. Mr. Stewart advised that staff could provide some illustrations to further explain how this concept would be applied. The Commission agreed that illustrations would be helpful.

Commissioner McClelland suggested that many people interpret the ratios to mean the area of the entire parcel, not the percent of the parcel that is disturbed, and this misconception has been a significant concern. She concluded that it is important for staff to provide clear information to illustrate the intent of this section.

- **Page 80 – Section 20.80.360.C:** This section was added to indicate that Tsunami hazard areas might be designated as flood hazard areas by the Federal or State Government. He noted that there is some Tsunami risk from Puget Sound. The section related to frequently hazardous areas was not changed because the City only has one area of town classified as a FEMA flood hazard area, along Boeing Creek by Hidden Lake. There are four or five privately-owned parcels in Innis Arden that would qualify for flood insurance. Mr. Stewart clarified that every property in the City is eligible for flood insurance, but the FEMA maps are rating maps.

- **Page 92 – Section 20.80.460.A:** A definition of “stream” was added to this section. The proposed definition would read, “Streams are those areas where open surface waters produce a defined channel or bed, not including irrigation ditches, canals, storm or surface water runoff devices or other entirely artificial watercourses, unless they are used by salmonids and 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 flow.” He noted that the last sentence refers to a Type IV Stream, which does not require water all the time. Mr. Stewart noted that this definition is identical to the definition on Page 34. While, typically, staff tried to avoid redundancy, they felt the definition should be located in both places to eliminate concern and confusion.
- **Page 93 – Section 20.80.470.A:** In the classification for a Type II Stream, the term “have salmonid fish use” was added, and Items 1, 2 and 3 were eliminated because of the ambiguities they presented. The potential for salmonid fish use could be argued indefinitely, and significant recreational value could be defined in different ways, depending on the area. Mr. Stewart explained that staff has identified what they believe to be a reasonable definition for salmonid fish use, but they expect the environmental proponents to look carefully at this section.
- **Page 94 – Section 20.80.470.E:** The long definition for temporarily created streams was removed because it was already stated in the definition of streams.
- **Page 95 – Section 20.80.480.B:** This section identifies the established buffers for streams. Again, staff attempted to match these buffers to those required for wetlands. The numbers are based on WRIA 8 recommendations.
- **Page 95 – Section 20.80.480.C:** This section was amended to match the language in the wetlands section for buffer averaging. It provides the maximum protection for critical areas.
- **Page 98 – Section 20.80.480.F:** These amendments are intended to make the buffer averaging section for streams match up to the buffer averaging section for wetlands. Nothing new was added to this section.
- **Page 99 – Section 20.80.480.H:** Previously, the City did not have any method for people to restore underground or piped streams on private property. Item H encourages watercourse restoration and establishes a ten-foot minimum buffer for the new proposed streams. Mr. Stewart explained that under the current regulations, daylighting a piped watercourse would make it a Type III Watercourse, and the standard buffer width of 65 feet on each side would be required. The proposed language would provide a method whereby a property owner would be required to provide a minimum 10-foot buffer on each side for maintenance and restoration. Staff believes the proposed language would provide an incentive for the restoration of piped watercourses.

- **Page 109 – Section 20.50.310.A.1:** The current code does not require a person to notify the City before a hazardous trees is removed. This amendment would require a person to notify the City within one working day, and if possible, before they take the hazardous tree out. It would also require tree restoration for hazardous trees that are removed.
- **Page 110 – Section 20.50.310.A.5 and A.6:** This item provides an exemption from needing another permit if an applicant is already working with the City to have a critical areas stewardship plan. Item 6 exempts commercial properties from being required to obtain a clearing and grading permit to remove trees unless there is a critical area involved.
- **Page 127 – Section 20.50.360.C:** This amendment eliminates the exemption for hazardous trees from the planting requirements. Arborists would have to recommend the number of plantings, the type of plantings, and the method of planting that would take place to replace the hazardous tree that was removed.

Vice Chair Piro suggested that in order to keep the Commission's discussion at a manageable level, perhaps they should work through the document sequentially, section by section. Commissioner Sands said he spent a lot of time reviewing the draft ordinance, and he has questions on just about every page. He suggested that it might be more productive for him to submit his questions to the staff after the meeting. Copies of his questions and the staff's response could be forwarded to each of the Commissioners. He said he feels the entire document was drafted poorly, and useful definitions were taken out.

Vice Chair Piro agreed with Commissioner Sands that it would be helpful for the Commissioners to forward their written questions to the staff. Staff could respond to these questions at a subsequent meeting. However, he suggested that perhaps they could begin reviewing the first sections of the document now.

Commissioner MacCully concurred that there are advantages to the Commissioners directing written questions to the staff. He suggested that the Commission continue their group discussion on issues such as mapping, the overall impact of the proposed changes, etc. Commissioner Kuboi agreed that the Commission should spend more time discussing the intent of the proposed ordinance.

Chair Harris said that if the Commissioners agree to forward their comments to the staff, he would like to see a collective summary of all of the questions. The Commission agreed that rather than debate issues now, the Commissioners should forward their written questions and concerns and allow staff to prepare a response for presentation and discussion at a future meeting.

Vice Chair Piro inquired regarding the schedule for the Commission's review of the proposed Critical Areas Ordinance. Mr. Stewart reminded the Commission that the State mandate required the City to complete their review of the critical areas ordinance by the end of 2004. However, very few cities have actually met this deadline. More important than getting the document done on time is getting it right. If the Commission needs more time to work on their review, they should do so. He recalled that the original ordinance was adopted in 2000 using best available science. While some could argue that this

meets the State's mandate, staff believes changes are necessary, and the Commission should move forward with discussion and debate of the proposed ordinance. He recommended that the Commission take as much time as they need to review the Critical Areas Ordinance, even if they have to postpone the public hearing beyond February.

Commissioner Phisuthikul requested that staff provide each Commissioner with a copy of the existing critical areas map. Mr. Stewart explained that Section 20.80.020 in the current ordinance (Page 38 of the staff report) states that the approximate location and extent of identified critical areas within the City's planning area are shown on the critical areas maps adopted as part of this chapter. However, no maps were ever adopted. He pointed out that the language indicates that the maps were to be used for informational purposes only to assist property owners and other interested parties. It further states that the boundaries and locations indicated on the maps are generalized, and that critical areas that have not been previously mapped may occur within the City. This section goes on to talk about how the actual classifications are made as part of project applications.

Mr. Stewart reported that Mr. Torpey has made great progress on the mapping folio, and a draft set of maps should be available soon. He advised that the stream and wetland inventory required a huge amount of work, but the project has been completed.

Commissioner MacCully said it is important that the Commission not require the staff to hurry the maps, thus ending up with non-professional documents. While the maps would likely generate more public response, it is important that they be accurate. He said he would be interested in learning how the impacts of the proposed changes would differ from the current requirements. The proposed changes could increase the amount of non-developable land, which is not necessarily bad. But there would also be more instances where the development of a property would require a reasonable use permit.

Mr. Stewart asked that staff be allowed an opportunity to consider the mapping issue further. He said he is optimistic that they would be able to provide maps to identify the generalized location of the critical areas. Mr. Torpey said the City already has information showing where the wetlands and streams are located, but they don't have each one of them classified yet. Therefore, they would be unable to map the buffer zones. Mr. Stewart summarized that he understands the Commissioner's concerns about mapping and would prepare a response at the next meeting.

Commissioner Hall inquired if the maps would distinguish between the fish and wildlife habitat conservation areas and other types of critical areas. Mr. Stewart answered that the City has never designated a fish and wildlife habitat conservation area. However, the City does have information from the Department of Fish and Wildlife identifying areas they have designated. He noted that there is language in the proposed ordinance whereby areas that are not mapped could be designated through another mechanism. He said he received questions regarding this same issue from the Thornton Creek Alliance, and he responded with an email that is now part of the record. He said he would provide a copy of the email to each of the Commissioners.

Commissioner McClelland said the first paragraph in **Section 20.80.270** of the ordinance should be changed to make it clear that the City has not designated any fish and wildlife habitat areas. Perhaps the

words "designated by the City" should be deleted. Mr. Stewart agreed that staff should clarify the intent of this section.

Commissioner Hall said he finds it difficult to understand, from reading the ordinance, what protections apply and when. He specifically referred to Puget Sound shorelines. Mr. Stewart answered that Puget Sound is the only Category I Watercourse in the State, and it is protected under the Shoreline Management Act. His understanding of the current law is that the Shoreline Management Act dominates as long as the protections are no less than those provided for in the Critical Areas Ordinance. This requires that any development within 200 feet of the high water mark must meet the provisions of the Shoreline Master Program. Mr. Stewart suggested that the staff and Commission discuss the relationship between Shoreline's Critical Areas Ordinance and the Shoreline Master Program at a future meeting.

Vice Chair Piro recalled that the GMA included provisions for looking at hazard areas that were created by human actions, such as mines, etc. Mr. Stewart advised that Type D Soils have recently been mapped by the University of Washington. These soils are susceptible to high degrees of liquefaction during a seismic event, particularly for brick or masonry structures. In the future, the City must map and designate the Type D Soils as seismic hazard areas.

Commissioner McClelland asked why there were no aquifer recharge areas identified in Shoreline. Mr. Stewart explained that the City is located on a mound of earth between Puget Sound and Lake Washington, and it is likely that the water probably flows into the surface waters. Aquifers can be thought of as below ground lakes that are recharged by surface water percolating down. He suspects the water tables in Shoreline are more closely related to the hydrology of Lake Washington. He advised that the primary reason for protecting aquifer recharge areas is when they are used as a source of drinking water, and there are no wells in the City of Shoreline that use them. However, the hydrology of the surface water is a whole different matter and is very important when it comes to recharging streams and wetlands.

Commissioner MacCully pointed out that best available science appears to be a developing and changing environment with something new coming up regularly. He asked how often the City should review newest best available science practices and update their ordinance. Mr. Stewart referred to RCW 36.70A.172(1), which states that "when designating and protecting areas, cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries."

Commissioner Sands said his interpretation of this RCW is that the City must review and use best available science when developing their statutes. While it does not require a City to follow the best available science if it is not meaningful to them, they must take it into consideration.

City Attorney, Ian Sievers, referred to the court case known as the "Action Network Case." This case dealt with the questions of how to use best available science and how cities could simultaneously

balance the GMA goals with their obligation to protect the environment. He quoted a few paragraphs from this court case as follows:

“The County is correct when it asserts that under GMA it is required to balance the various goals set forth in RCW 36.78.020. It is also true that when balancing the goals in a process of adopting a plan or development regulation under GMA, a local jurisdiction must consider BAS regarding protection of critical areas. This does not mean that the local government is required to adopt regulations that are consistent with BAS because such a rule would interfere with the local agency’s ability to consider the other goals of GMA and adopt an appropriate balance between all the GMA goals. However, if the local government elects to adopt a critical area requirement that is outside the range that BAS alone would support, the local agency must provide findings explaining the reasons for its departure from BAS and identifying the other goals of GMA, which it is implementing by making such a choice.”

Mr. Sievers explained that the County lost their case because they could have balanced, but simply didn’t. The County didn’t create a record pointing to the other goals, nor did they develop facts to support why they didn’t select something within the range of best available science. While they thought they had picked something within the range of best available science, the court could not find supporting evidence in the record.

Mr. Sievers said the county won on one issue because they adopted something within a range of best available science for a Type I Stream buffer. He read the following from the court case:

“We conclude that substantial evidence exists to support the court’s concluding that a Type IV Stream is a stream that is two feet or wider, not used by a significant number of fish, its primary importance is predicting water quality down the stream.”

Mr. Sievers pointed out that the County recommended 50-foot buffers for Type IV Streams and the Washington Department of Fish and Wildlife recommends buffers of 150 feet for Type III and 150 to 225 for these Type IV Streams. The environmental group that appealed the County’s ordinance alleged that best available science requires a 100-foot minimum for all streams. The courts found that the County produced a number of scientific studies showing that their selected buffer for the streams did meet most functions for Type IV Streams, and in this case, the record supported their buffer requirements. He concluded by stating that when a city adopts something that is outside the range of best available science, they must also adopt their own findings showing why and how they are balancing best available science with GMA goals.

Commissioner Broili said he worked in Skagit County several years ago when they were trying to apply buffers. Dr. Albertson, a Fisheries specialist who has done a lot of work with best available science, provided testimony at the Growth Management Board that best available science depends on the question you are asking. As an example, Skagit County was trying to apply buffer averaging and buffers that were based on Department of Fish and Wildlife data on what is best available science for upland streams. But when considering lowlands, flood plains and developed lands, it is important to ask if the best available science is still appropriate science. Mr. Sievers recalled the description of best available

science that was provided to the Commission at a previous meeting by the consultant, Paul Inghram. He advised that the City must consider the key variables associated with the area being considered.

Commissioner Hall commended the staff for carefully reviewing the work that was done for the WRIA 8 Plan. In terms of creating a defensible ordinance, he felt the staff did a great job. Relying on the work that has already been done is a great place to start. If the City chooses to depart from best available science, they know they must provide evidence in the record to support this diversion.

Commissioner Kuboi inquired to what extent the current draft ordinance balances the GMA goals. If it does not, he asked staff to describe the proposed process for the Commission to balance the proposed draft with the GMA goals at some point in the future. Mr. Stewart answered that staff often hears numbers of 300 feet for buffer areas, but these are more applicable to rural areas. Shoreline is highly urbanized, and he is comfortable that the recommended buffers are appropriately balanced with the other goals of the GMA. Staff has not completed the specific analysis of how much buildable land they would lose by increasing the buffers, but this information could easily be produced. He noted that King County has developed two standards, one for the rural areas and one for the urban areas. The standards that is being recommended in the draft ordinance are consistent with those identified by King County for their urban areas.

Commissioner McClelland recalled an APA Conference session a few years ago when best available science was being discussed at length. She reminded the Commission that the Department of Community, Trade and Economic Development (CTED) is trying to accomplish some standards for science that make the ordinances amongst the participating municipalities a little more consistent. This would enable the State to build a body of knowledge and test the requirements. One of the deficiencies in the requirement for best available science is that the regulations have not been in effect long enough for scientists to have a clear idea of what the results will be. The goal is to build a track record based on the length of time the requirements have been in effect. Best available science is a new concept, and Washington is one of the few states that require statewide compliance.

Commissioner Broili said one of the things he learned from the Skagit case was that the width of the buffer is dramatically impacted by what the upland use is, especially in urban areas. He suggested that in an urban area it could be argued that the 120 to 150-foot buffer would not be adequate in almost any case. Mr. Stewart agreed. He said it is important to focus on the function the buffer is performing. If the function of the buffer were to enhance water quality and 80 percent of a watershed comes directly off a street without any cleansing, the function of the buffer would not be met. The City must then determine if they could provide that function some other way, and these other options might pay the biggest dividends in urban areas.

Commissioner Kuboi inquired if staff would obtain input from other City Departments, who might be proponents for other aspects of the GMA goals (i.e. economic development, affordable housing, etc.). Mr. Stewart advised that the City has a leadership team, where all of the departments meet to discuss the various strategies involved in balancing requirements. Commissioner Kuboi asked that staff provide a synopsis of the input that was provided at the leadership team meetings. This would enable him to better

represent the overall community interests. He advised that staff would prepare to address the GMA goals in more detail at a future Commission Meeting.

Mr. Sievers suggested that it is important for the Commission to go back to the original question of what is being proposed in the draft ordinance. Is it a straightforward best available science plan, or are they proposing something that does not quite fit within the range of best available science thus requiring the City to balance the ordinance with other values? He suggested that since the ordinance falls within the range of best available science, there would be no need for the City to balance it with the other GMA goals. However, there has been some inference by the Commission that they would like to complete this balancing exercise anyway. However, unless the ordinance is applied to a City map to determine how uses and land would be impacted by the critical areas and buffers, it would be difficult for the Commission and staff to consider the appropriate balance.

Mr. Sievers further suggested that rather than being scientific standards, the terms, "urban" and "rural" are more political balancing standards. The City is faced with making a political decision. While there are definite benefits to protecting the critical areas in rural areas to a greater degree, urban areas such as the City of Shoreline must consider other factors, as well.

Commissioner MacCully noted that most of the Commission's discussion about maps has been related to the critical areas associated with water. However, they must also consider the other types of critical areas, which might be easier to define, such as erosion hazard areas, landslide hazard areas, seismic hazard areas, fish and wildlife habitat areas. Mr. Stewart pointed out that geologically hazardous areas were defined by King County years ago, and they have not changed very much over the years. The most significant issue is related to Type D Soils as discussed earlier, and staff plans to provide more information regarding these soils at a future meeting. Commissioner MacCully emphasized that if someone were to build a home on unstable soil and a problem occurs, the entire community would have to pay a price to address the problem. The Commission should consider opportunities to avoid these situations.

Commissioner Hall pointed out that the buffer widths that are proposed in the draft ordinance are not those that were identified by the pure scientific exercise. He further pointed that science would say that fish do not care whether a stream is located in a rural or urban area, and the rationale behind King County and WRIA 8's decision to reduce the risk was based on other factors, including the desire to allow development to occur in patterns that are comparable to what has occurred to date. He suggested that it would be wrong for the Commission to believe that the buffer widths proposed in the draft ordinance were based purely on science. Elected officials have worked very hard in the WRIA 8 process, and their discussions have gone far beyond science in trying to balance environmental needs with future growth. The City Council must determine whether or not the proposed ordinance constitutes best available science, based on the Commission's recommendation. The Commission's recommendation as to whether the ordinance represents the right balance would be crucial to the City Council's ultimate decision.

Mr. Stewart inquired if the Commission would like staff to generate a map that illustrate the impacts of a strict application of a 300-foot buffer requirement for all critical areas. The Commission agreed that

would not be appropriate. However, Commissioner Sands indicated that he would like the staff to generate a map to illustrate the application of the buffers proposed in the draft ordinance.

Commissioner Sands said it is important for the Commission to keep in mind the impacts the proposed ordinance would have on individual property owners. He suggested that the proposed ordinance is incredibly confusing, and in all likelihood it is unworkable. He said the ordinance is not clear about how a private property owner is supposed to comply with the requirements. Would an owner of property that has a slope be required to obtain a geotechnical review to determine if a critical area exists before the property could be sold to a third party? Mr. Sievers answered that a property sale is not one of the identifiable land use approvals that would require notification on property records. Only permit actions would trigger this requirement. Commissioner Sands said that as he considered the buffer requirements for Type IV Wetlands, he found them to be ridiculous. The 35-foot buffer requirement around a 2,500 square foot Type IV Wetland would equate to 10,000 square feet of buffer area to protect just 2,500 square feet of wetland. This would require 1/3 acre of land to protect a small wetland space. If the wetland is smaller in size, the situation could get even more ridiculous. He expressed his concern that it would be difficult to make an ordinance that fits every situation.

Commissioner McClelland said that when reviewing the draft ordinance, she had to take the point of view that the Commission cannot consider every conceivable application and outcome. She suggested that perhaps it would be helpful if staff were to provide a vacant lands map to illustrate the number of vacant properties in the City that might be impacted by the ordinance. The Commission should not presume that every property in the City would be redeveloped or that every development application would trigger the ordinance. Mr. Stewart advised that the City recently completed a buildable lands inventory as per a State requirement. This process indicated that 98 percent of the City's projected growth would be redevelopment. There are very few vacant properties in the City, with the exception of some under-utilized parcels.

Vice Chair Piro referred the Commission to the sections of the proposed ordinance related to hazardous trees. He inquired if an "approved utility facility" is defined in any of the City's code documents. Mr. Stewart answered that there is a definition for this term on Page 34 of the ordinance. He explained that the current "hazardous tree" definition does not carefully qualify what target the tree would receive, and some have made the argument that a target any place on the ground would qualify as a hazardous tree. Others have said that as long as the tree is not located in an area where humans spend a lot, it should not be considered a hazard.

Commissioner Phisuthikul suggested that rather than creating a map that defines all of the proposed setback areas at this time, it would be helpful for staff to at least identify the various types of critical areas. Mr. Stewart noted that the stream inventory listed all of the watercourses, and the criteria in the ordinance was applied to the stream reaches or segments to make a classification. The same process could be used to create maps for wetlands, slopes, etc. Again, he said staff would spend some time researching mapping possibilities that could aid the Commission in their review.

Commissioner MacCully inquired if the City has a provision to fine people who illegally cut down trees. Mr. Sievers said the ordinance has criteria for various kinds of fines for intentional acts. There is also a

whole other level of fines to capture any economic profit from violating critical areas laws. The intent is to prevent a situation where a property owner is willing to pay a fine because the benefit (i.e. a view, etc.) to him/her would be greater. An individual would be required to pay a fine that is equal to the increase in the market value that is obtained. Mr. Stewart advised that **Section 20.30.780** is the penalty portion of the ordinance. He briefly reviewed the proposed language. He said that in one recent case, the City imposed a fine of \$1,000 per tree. In another case, a significant fine was imposed but was abated by the Hearing Examiner provided that restoration was done in accordance with the restoration program.

Vice Chair Piro said he would like the staff to provide some reassurance that the City would not end up with a situation where a lovely, healthy tree is removed because a branch hangs over a utility line. Mr. Stewart said language is included in the ordinance related to removing only that portion of the tree that is hazardous. Vice Chair Piro said he would like the language in the ordinance to make it clear that removal should only be allowed if it is the only recourse.

Commissioner Hall said that as he read through the tree removal section of the ordinance, he found that perhaps the amendments go too far the other way and create an inadvertent possible loophole. He specifically referred to **Section 20.50.310.A.1** on Page 109 of the Staff Report. He noted that the language "an immediate threat to the public health, safety or welfare" was not repeated in the definition of a hazardous tree. Therefore, as proposed in the draft ordinance, if a tree falls under the range of environmental conditions of the site, the entire tree could immediately be removed because it is hazardous without any advance notice to the City. He felt this exemption goes too far and does not do enough to protect trees. He encouraged the Commission to consider a requirement of advance notice unless there is an imminent threat to life or property. Mr. Stewart said this issue would likely receive significantly more discussion at future meetings. He said he understands Commissioner Hall's concerns since staff has discussed the issue of imminent threat at length while engaged in enforcement actions.

Commissioner Sands inquired if the proposed ordinance includes a definition for the term "significant tree." Mr. Stewart answered affirmatively. Commissioner McClelland said it would be helpful to have a copy of all of the definitions rather than just those for which amendments are being proposed. Mr. Stewart advised that the definitions are all located in the Development Code. Vice Chair Piro suggested that the Critical Areas Ordinance cross-reference the applicable definitions from the Development Code.

Commissioner Sands clarified that the proposed ordinance would not limit the number of non-significant trees a property owner could remove. However, only six significant trees could be removed from a property during a three-year period. Mr. Stewart concurred but noted that, under the current code, a property owner would not be allowed to remove any significant tree from a critical area. In addition, the Planning Director would have the discretion to determine what constitutes the removal of a significant tree, and an interpretation is on record to aid in this determination.

Commissioner Sands inquired if arborists who work in the community have a clear understanding of the City's rules and requirements. Mr. Torpey said that an arborist must be licensed by the State of Washington, and it would be considered a breach of professional ethics if he/she were to remove a significant tree without following the City's rules and requirements. Commissioner Sands inquired how

the City tracks these situations to make sure the tree removal regulations are met. Mr. Stewart explained the current process for tracking and enforcing code violations, including those related to the tree ordinance.

Commissioner McClelland inquired if the 10-foot buffer guideline for a piped-watercourse would apply if the City or another public agency were the applicant. Mr. Stewart answered that the buffer requirements would not vary by applicant.

The Commission discussed the schedule for proceeding with their review of the draft ordinance. Mr. Stewart summarized that it does not appear the Commission would be ready to hold a public hearing on February 17th. He suggested that the schedule be adjusted to allow at least two more work sessions for the Commission to review the additional information that has been requested. The Commission agreed that the February 17th meeting should be tentatively scheduled as a Planning Commission workshop to review the draft Critical Areas Ordinance, with the anticipation of a public hearing on March 17th.

Commissioner Broili reminded the Commission that questions have been raised regarding the overall philosophy of the proposed Critical Areas Ordinance. In addition, the Commission has just begun to voice their numerous questions regarding various aspects of the ordinance. He suggested that the Commission first identify a strategy for reviewing the ordinance in a progressive way that would allow them to be effective with their time. Commissioner Hall agreed with Commissioner Broili. He recalled his previous suggestion that the Commission's next workshop discussion should be limited to specific issues that are raised by the Commission via written comments to staff. The staff could compile these issues and provide a response to each. He suggested that each Commissioner be responsible for submitting their list of items they would like to discuss at the next workshop. If any Commissioner feels strongly that something in the proposed ordinance should be changed, they should put forward their ideas for a proposed amendment to address their concerns.

Vice Chair Piro agreed with the process recommended by Commissioner Hall and felt it would enable the Commission to get through their initial review of the proposed ordinance with only one additional workshop. However, he suggested that staff notify the Commission as soon as possible if they feel they have received an overwhelming amount of material. This would enable the Commission and staff to modify the schedule and notify the public. The Commission agreed that their comments should be forwarded to the staff no later than January 28th. The staff could then provide their written response to the Commission on February 3rd. Mr. Stewart pointed out that there are other significant items scheduled for discussion at the February 3rd meeting, so the Commission would not have an opportunity to discuss the new information in detail. The Commission could review the responses and be prepared to discuss their concerns and questions at the February 17th workshop meeting. He added that a compilation of the Commissioners' questions would be forwarded to each of the Commissioners as soon as possible after January 28th. In addition, Mr. Stewart suggested that individual Commissioners could schedule an opportunity to meet with the staff to discuss issues related to the proposed ordinance prior to the February 17th workshop discussion.

Commissioner Broili said he is still unclear about how the Commission plans to resolve their concerns related to the basic philosophy of the Critical Areas Ordinance. The proposed process of submitting

questions to staff would probably not be the appropriate method for dealing with this issue. He suggested that this issue could be best addressed through a Commission discussion process. Mr. Stewart explained that as the Commission reviews the ordinance, part of their basis would depend upon the goals and policies that are now being considered by the City Council. These policies will set the framework for the Critical Areas Ordinance update, within the confines of the law. As the Commission gets further into their review, the values will come forward in terms of what the actual rules should be and how they should be applied.

Commissioner MacCully emphasized his belief that while the review process would not be as clean and orderly as some of the Commissioners may desire, one of the advantages of a group discussion is the opportunity to consider the philosophical underpinnings. The more the Commission learns about the proposed ordinance, the more intense their discussions would likely become.

Commissioner McClelland suggested that staff provide a one-page summary of the GMA Goals for the Commission to reference during their future review and discussions. Mr. Stewart advised that staff could provide this information. Mr. Torpey asked that the Commissioners submit their questions to him electronically, if possible.

7. REPORTS OF COMMITTEES AND COMMISSIONERS

There were no reports from Commissioners.

8. UNFINISHED BUSINESS

Mr. Stewart reported that proposed a process for the City Council to follow for the review of the Cottage Housing Ordinance, and they provided a number of comments and suggestions. Council Member Fimia developed an alternative process, which has been reviewed by the staff. The staff will present an alternative process for the City Council's consideration on January 24th. He further reported that at the January 24th City Council Meeting, staff would also request a six-month extension to the cottage housing moratorium to allow sufficient time to review the ordinance. He advised that the City Council expressed a desire to tour cottage housing projects with the Planning Commission, and staff is in the process of scheduling this event. He noted that the original application that was submitted for the Cottage Housing Project on Northwest 8th Street has been re-submitted as an 8-unit single-family development, instead.

Mr. Stewart reported that the City Council opened the public hearing for the Comprehensive Plan amendments in December, and it was continued to January 10th. The record has been kept open for written comments until January 21st. There have been 55 people comment thus far, and about 150 to 200 individual comments. Staff would put together responses for all the comments, and the City Council is expected to move into deliberations soon.

Commissioner Hall suggested that perhaps a joint City Council/Planning Commission retreat could be scheduled on the same evening as the cottage housing tour. Mr. Stewart said a retreat is on the staff's list of item to complete, but the Comprehensive Plan and Critical Areas Ordinance amendments are their top priority right now. Commissioner Piro reminded the Commission that they also suggested holding

the retreat in another community where they could look at some features of development that are happening elsewhere. One suggestion was the Mill Creek Town Center Development.

Commissioner Kuboi requested an update of the Gateway Shopping Center Project. Mr. Stewart reported that the street was vacated, and the site development permit was approved. The building permit for the Bartell's project was approved and issued, and the building permit for the L-shaped building is very close to being approved. He reminded the Commission that there are a number of conditions associated with the vacation and permit that still must be met.

Chair Harris inquired regarding the timeline for the demolition of the businesses along Aurora Avenue North. Mr. Sievers said the time period is supposed to expire in February or March, and it appears that one business will request an additional month or two. Mr. Stewart advised that the City has hired a consultant to finalize the design of the trail from North 175th Street up to North 192nd Street. A short briefing on the proposed design could be scheduled on a future Commission agenda. There may also be some public open houses scheduled regarding this issue.

Chair Harris inquired if Sky Nursery has received a building permit for a new building. Mr. Stewart said discussions are taking place between the City and the owners of Sky Nursery regarding their future development plans. They are moving forward with a long-range development plan for their property, and part of that plan includes where the trail is going to be located and where the pedestrian connections are going to be made.

Vice Chair Piro referred to the memorandum the Commissioners received from Davida Finger who is doing some legal counsel for some Shoreline citizens. He said he welcomes opportunities to talk with citizens and neighbors about issues. However, he requested that staff provide the Commission with advice in terms of the nature of these communications and discussions when legal actions are involved. Mr. Stewart indicated that staff would review Vice Chair Piro's concern and provide a response.

9. NEW BUSINESS

There was no new business scheduled on the agenda.

10. ANNOUNCEMENTS

Chair Harris announced that the City of Shoreline is planning a 10-year birthday celebration. Committees have been formed to plan and coordinate the event. He has been invited to participate on two of these committees. The event will be held in late summer in conjunction with the annual "Celebrate Shoreline" event.

11. AGENDA FOR NEXT MEETING

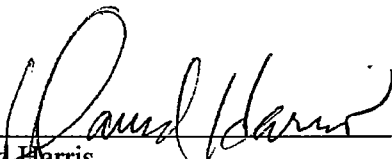
Ms. Spencer reminded the Commission of their previous recommendation to the City Council that a condition be placed on Drift On Inn's special-use permit requiring that it be revisited after the racing

season. Mr. Stewart recalled that the Commission had raised the question about whether additional traffic mitigation should be required.

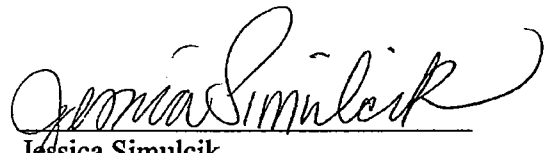
Mr. Stewart said the Commission would also review the site-specific Comprehensive Plan changes at the February 3rd meeting. He reminded the Commission that this would be a quasi-judicial action. Ms. Spencer added that summary details of each of the proposed changes were provided in the Commission folders.

12. ADJOURNMENT

The meeting was adjourned at 9:50 p.m.



David Harris
Chair, Planning Commission



Jessica Simulcik
Clerk, Planning Commission

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION SUMMARY MINUTES OF REGULAR MEETING

February 17, 2005
7:00 P.M.

Shoreline Conference Center
Board Room

PRESENT

Chair Harris
Vice Chair Piro
Commissioner McClelland
Commissioner Kuboi
Commissioner Hall
Commissioner Sands
Commissioner Broili

STAFF PRESENT

Tim Stewart, Director, Planning & Development Services
Matt Torpey, Planner II, Planning & Development Services
David Pyle, Planner I, Planning & Development Services
Paul Inghram, Berryman & Henigar
Jessica Simulcik, Planning Commission Clerk

ABSENT

Commissioner MacCully
Commissioner Phisuthikul

1. CALL TO ORDER

The regular meeting was called to order at 7:03 p.m. by Chair Harris, who presided.

2. ROLL CALL

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

3. APPROVAL OF AGENDA

The agenda was approved as submitted.

4. APPROVAL OF MINUTES

The minutes of February 3, 2005 were approved as written.

5. GENERAL PUBLIC COMMENT

Janet Way, 940 Northeast 147th Street, reminded the Commission that the intent of the State law is to protect the critical areas. Any measures that are taken to parse the words in order to undermine the protections would be inappropriate. It should be the City's objective to support the protection of critical areas and improve them. According to her understanding of the State law and the Endangered Species Act, if a stream has potential habitat, it must be restored. She referred to the center column of the matrix on Page 55 of the Staff Report, which identifies the Planning Commission comments related to the classification of a stream (Section 20.80.470). She said she finds the last Planning Commission comment to be very perceptive, and she agreed that the objective of this proposed amendment appears to have been added to address the issue of the one fish that was sited in Thornton Creek.

Ms. Way emphasized that the goal of the Thornton Creek Legal Defense Fund is to avoid undermining and degrading Thornton Creek specifically, but also the other streams, as well. She urged the Commission to find ways to regenerate the streams rather than creating an ordinance that protects the City from having to do so.

Virginia Paulsen, 16238 – 12th Northeast, said her vision for Shoreline is embedded on what Shoreline was 150 years ago and includes reforesting the area and protecting the environment. She said she would even like to have the native plants reintroduced at Ronald Bog Park. While recently visiting the Lake Forest Park Mall, she stopped in at Wild Birds Unlimited because they had native trees and plants in front of their establishment. She learned that Lake Forest Park has a Community Wildlife Habitat Project to protect their wildlife and waterways one yard at a time. The goal of the plan is to make sure entire projects are developed so that Lake Forest Park can become closer to its original habitat. She suggested that as the City considers future plans and developments, they should also consider an alternative vision for Shoreline that goes beyond just protecting the critical areas or creating buffers. She submitted a copy of the Lake Forest Park Community Wildlife Habitat Project document, which was identified as Exhibit 1.

Tim Crawford, 2326 North 155th Street, directed the Commission to the third paragraph on Page 23 of the Staff Report. He reported that he observed the Casper Remand Hearing a few weeks ago. He understands that there has been a lot of talk amongst the staff about conflicting and battling biologists. He clarified that the science that was produced by Adolphson and Associates is in continual direct conflict with best available science produced by the Washington State Fish and Wildlife. They have prevailed on this issue in court previously, and they will continue to prevail. Next, Mr. Crawford referred the Commission to Page 43 of the Staff Report (Section 20.80.270). He questioned why the City's best available science is in conflict with that of the Washington State Department of Fish and Wildlife, when they should be one and the same. He recalled that past problems with the City were created because staff did not follow the recommendations from the State and National Agencies. The City can continue to do this, but it will result in many situations before Superior Court. He said it is not going unnoticed that when Planning Commissioners leave their positions, they often end up taking advantage of the injustice they are doing to the environment.

Patty Crawford, 2326 North 155th Street, provided six handouts that were identified as Exhibits 2 through 7. She said she is concerned about the general direction of the proposed changes to the Critical Area Ordinance, which has a real wetland priority. She noted that with the new City Hall Project, the

City has identified Echo Lake as a wetland. She referred to a court order related to the designation of Peverly Pond as a wetland, which indicates that the consultant's science and the Determination of Non-Significance were not upheld at the Superior Court Level. She referred to a list of materials which indicate that the proposed changes are heading in this same direction because they do not include a lot of stream information. At Mr. Stewart's request, she provided information outlining the difference between the flowing water of a stream and the still water of a pond, which she obtained from a 3rd grade biology book. If it is open water, it should be considered an open water pond of the United States. If it has vegetation in it, it should be considered a wetland. She concluded by stating that the staff is trying to twist around the definition for surface water. She explained that surface water should be defined by where it originated. If it comes from the sky, it should be considered surface water.

Jeralyn Hambly, 5721 – 181st Street Southwest, Lynnwood, said she is acting as the guardian for her brother who is living at the Fircrest School. She said she is interested in protecting creeks and lands in the City from a tribal aspect. She encouraged the Commissioners to carefully consider this issue before there is any Native American involvement.

6. STAFF REPORTS

Workshop Discussion on Critical area Ordinance Update

Mr. Torpey explained that this discussion is a continuation of the workshop of January 20th, when staff introduced the draft changes to the Critical Area Ordinance. Since that time, the staff has received a large number of comments from the Planning Commissioners, which were grouped into 69 different categories. He referred to the comment matrix that was included as part of the Staff Report, which identifies the draft code sections, the Planning Commission comments and the staff's response to each.

Mr. Stewart advised that there were a couple of additional comments that were not included as part of the matrix. He recalled that through discussions with Commissioner Hall and members of the Thornton Creek Alliance, it was suggested that the ordinance designate all wetlands, streams and their buffers as fish and wildlife habitat conservation areas. The functions and values of these resources and their buffers would not only include protection of the water or the wetland, but would also provide the critical habitat for fish and wildlife. This proposed change would address the concern raised by a number of people about how these conservation areas would be designated. He explained that if there are other areas in the City where there is documented presence of fish and wildlife, the City could further delineate those areas based on best available science after diligent review.

Mr. Stewart said a number of people indicated that they would like to see the maps that are referenced in the ordinance. He explained that the King County folio of critical areas, which the City is currently using, is a document that provides very generalized maps. But this has been augmented by the Stream and Wetland Inventory that was recently approved by the City Council in 2004. In addition, a Lidar image of the City identifies the topographic relief of the various areas of the City. There is a large canyon running west to east from the water, which is identified as the Boeing Creek Basin. Various other features are also identified on the map, including the individual grading of the lots throughout the City. These maps point out how highly disturbed the City's landscape is. Mr. Torpey briefly explained

the process that was used to collect the Lidar images, and Mr. Stewart pointed out that the Lidar images are very accurate when compared to other types of data that was previously available.

Mr. Stewart explained that using the Lidar images, staff classified the slopes into three different data sets. The green areas indicate properties that have less than 15 percent slope, the yellow areas identify properties that have between 15 and 40 percent slope, and the red areas identify properties with a slope of 40 percent or greater. The current Critical Area Ordinance regulates the red and yellow areas, and this would continue with the proposed language, as well. Mr. Stewart further explained that in addition to the Lidar images, staff has another set of data to identify the liquefaction characteristics of the soil. But this data set comes from the University of Washington and is considered to be imperfect at this time. Lastly, Mr. Stewart referred to the map that was prepared by using the Stream and Wetlands Inventory that was recently completed by the City. This map shows all of the open watercourses in green, as well as all of the wetlands. It also shows a buffer distance of 35 feet on each side of the watercourses and wetlands. He explained that 35 feet is the minimum buffer that is proposed under the revised Critical Area Ordinance. He noted that a future task is to classify all of the reaches by type of critical area.

Vice Chair Piro referred to the map that was prepared to identify the various watercourses in the City and questioned how this new map compares to the previous King County Map. Mr. Stewart answered that the new map provides much more detailed wetland data. It identifies not only where the watercourses are located, but also a great level of detail about the intrinsic invertebrate index, the surrounding land uses, the quality of the watercourses, how much they have been denigrated, etc. All of this additional information will aid the City in reaching conclusions about how each critical area should be classified. He emphasized his view that all data is imperfect, and it is important to recognize that each data set contains imperfections. The City's responsibility is to assess and identify the level of imperfection. He suggested that the stream data is probably 95 percent accurate or better, but some of the other data will have to be verified in the field. The City is currently reviewing permits in which wetland scientists hired by both the applicant and the City are debating and disputing wetland delineation.

Commissioner Hall expressed his belief that the map appears to represent the scope of the field study the City contracted, and does not include all streams that have been identified on the King County Inventory. Mr. Stewart concluded that it is important for the map to be as complete as possible. He stated that the maps should be considered a work in progress, and the public and the Commissioners should feel free to provide their comments and suggestions for change.

Commissioner Broili questioned if the streams identified on the new map include all stream types. Mr. Stewart answered that the stream and wetland inventory did not include the classification or typing of any of the watercourses, and it included only open watercourses. He recalled the previous debate about whether the City should distinguish between open watercourses and artificial watercourses. The Commission directed the staff to remove the word "artificial." The map includes all open watercourses without distinguish as to whether they run in a concrete drainage swale or in natural historic beds.

Mr. Stewart advised that staff would likely suggest an amendment that would remove the words "government dam." He recalled that a comment was made about discussions to remove the Boeing Creek Dam. Because these discussions are underway and there is a reasonable expectation that the

removal could occur, staff presumes that the barrier to fish would be removed within six years. Therefore, the upstream classification of the watercourse would be changed.

Commissioner Hall applauded the staff's recommendation to designate streams and wetlands as fish and wildlife habitat conservation areas. However, he said he is still concerned that the proposed Critical Area Ordinance does nothing to deal with the shoreline of Puget Sound. He said he understands the legal distinction that shorelines of the State are protected through the Shoreline Master Program that was adopted under the Shoreline Management Act. But he referred to the recent house bill, which states that protection for critical areas that fall within the jurisdiction of shorelines in the State must be as least as strong of protection as that provided in the critical area ordinance. Since the City's ordinance does not protect Puget Sound at all, the field is left open. He said he would like the ordinance to include standards for protection of the Puget Sound shoreline as though there was no Shoreline Master Program. This would allow the Commission to consider environmental protection for all surface waters, while recognizing that the ultimate regulations applied would be the Shoreline Master Plan requirements.

Commissioner Sands suggested that the proposed Critical Area Ordinance simply reference the State Shoreline Master Plan regulations that apply to Puget Sound. Commissioner Hall pointed out that the Shoreline Management Act works similar to the Growth Management Act. The State does not actually adopt standards, but requires the individual jurisdictions to do so. The City must either address Puget Sound in the Critical Area Ordinance or in the Shoreline Master Plan. He concluded that it appears odd that the proposed Critical Area Ordinance does not even identify the Puget Sound shoreline as a fish and wildlife habitat conservation area.

Commissioner McClelland asked if the cities of Edmonds and Seattle include regulations related to Puget Sound in their critical area ordinance. She pointed out that there are currently residential properties and parks located along the Sound and questioned what type of protection Commissioner Hall would propose for these properties. Commissioner Hall suggested that, as a starting point, Puget Sound should be provided the same protection as those identified for streams. Commissioner McClelland pointed out that if Puget Sound were given a buffer, the public would not be able to access the water's edge. Commissioner Hall said he does not propose that the City deny public access to the shoreline, since the Shoreline Management Act identifies public access as one of its goals. Neither does the proposed Critical Area Ordinance propose that public access to the streams be denied. But where future development is proposed along the shoreline, conditions should be imposed for protection.

Commissioner McClelland said she recently listened to a speech provided by a wetland biologist, and he suggested that there are three issues that should be considered when reviewing a critical area ordinance: the protection of critical areas, the protection of private properties and the protection of government-owned properties. It is important that a critical area ordinance protect and balance all of these areas. She emphasized that the Commission should remember that the issue is far more complex than just protecting the environment.

Commissioner Broili indicated his support for Commissioner Hall's suggestion that the Puget Sound shoreline be addressed as part of the Critical Area Ordinance. He said he would like to consider the whole issue from a systemic watershed perspective, and he does now see how the City can separate the

shoreline from the creeks, streams, wetlands, etc. A single stream should not be reviewed in isolation from the surrounding landscape and the connections that are inherent within a watershed perspective.

Commissioner Hall said the City of Edmonds' Critical Area Ordinance does recognize the shoreline of Puget Sound. He recalled that there are specific marine issues called out in State Law related to the protection of forage fish spawning, eelgrass, kelp, shellfish, etc. In addition, the Growth Management Act requires jurisdictions to give special consideration to anadromous fisheries. He questioned how the City could justify the protection of salmon in Thornton Creek but not along the Puget Sound shoreline.

Mr. Stewart agreed that Commissioner Hall's issue should be addressed further, and he asked Mr. Inghram to clarify how the shoreline issue could be integrated into the Critical Area Ordinance. He pointed out that most of the shoreline is already heavily armored by the railroad tracks or by residential uses. During times of very low tide, it is evident that the condition of the residential properties is widely varied, and there will be continuing maintenance issues in the future. He also noted that Salt Water Park is the best piece of shoreline the City owns. He referred to the areas where the streams discharge into the Sound, and noted that Boeing Creek has a great opportunity for future improvements. In addition, he noted that a series of critical areas are located on the east side of the railroad tracks, and issues and debates have taken place about the streams and wetlands that have formed to capture the water as it comes down the hill. The City's Critical Area Ordinance does regulate the critical areas on the east side of the tracks, but he agreed that the City should further contemplate ways to integrate protection for the west side, as well.

Commissioner Kuboi asked how the proposed ordinance would establish the buffers for the conservation areas and how this would be reconciled with the buffer table for streams. As an example, Mr. Stewart explained that staff is now suggesting that the fish and wildlife habitat conservation area definition be broadened to include all areas that are streams, wetlands and their buffers. This would not add a further buffer requirement on top of the existing buffer, but the edge of the buffer would delineate the conservation area. There would be two ways for properties to become a fish and wildlife habitat conservation area under the proposed amendment. One would be if the property were within a buffer area now. The other would be through best available science and additional formal delineation. Commissioner Kuboi pointed out that the buffer for the conservation area might end up being greater than what the stream table calls for. Mr. Stewart agreed, depending on the species, the uniqueness and other best available science. Commissioner Kuboi said the staff's proposed broader categorization of habitat conservation areas makes sense to him. Commissioner Hall concurred but said he would also like the Puget Sound shoreline to be included.

Commissioner Hall referred to Section 20.80.260 (Page 42 of the Staff Report), which states that the City would give special consideration to anadromous fish. In addition, Section 20.80.270.A (Page 43 of the Staff Report) states that one of the criteria for a fish and wildlife habitat conservation area is the "presence of species proposed or listed by the federal government or State of Washington as endangered, threatened, critical or priority." He said he couldn't imagine the City adopting an ordinance that says they do not have documented evidence of listed salmonids on the Puget Sound shoreline that must be protected. Vice Chair Piro agreed and suggested that staff contact other surrounding jurisdictions such as Edmonds, Seattle, King County, etc. to find out how they regulate their Puget Sound shorelines.

Commissioner Kuboi restated a previous Commission request that staff somehow delineate the buffer areas on the maps. As if it is not already hard enough to delineate these buffer areas using stream tables that are relatively simple, the staff is proposing the infusion of the science driven process for determining the appropriate buffers for habitat conservation areas. He expressed his belief that the maps identifying the buffer areas will probably never be completely accurate. Therefore, the Commission will never have a clear understanding of what impacts the proposed changes would have on the community.

Mr. Stewart explained that best available science would be used to designate the habitat and the appropriate buffer, but then the City must balance the best available science with the other competing goals of the Growth Management Act. Commissioner Kuboi said it appears that the analysis of what an appropriate buffer would be for a particular habitat conservation area would be determined through a study conducted by the applicant of a proposed development. Mr. Stewart agreed. Commissioner Kuboi pointed out that an applicant could hire the services of a consultant to justify a smaller buffer than what the stream table calls for. Mr. Stewart reminded the Commission that best available science continue to evolve. He explained that the word "best" represents a value judgment that is debated depending on one's personal values, and "available" represents a resource question of how much money the City is willing to spend to complete studies, etc.

Mr. Stewart pointed out that the structure of the ordinance is such that the map represents only the approximate location of critical areas. Additional critical areas and their buffers may occur within the City even though they have not been previously mapped. When an application is submitted, the staff would use the map to help an applicant understand that there could be an issue with critical areas. But the specific location of a stream or wetland is often identified by the applicant during the permitting process. Surrounding property owners, who also hire scientists to study the issue, can challenge the location, as well.

Commissioner Kuboi noted that a table is provided in the ordinance to describe the mechanism for identifying stream and wetland buffers. Now they are introducing a process whereby a property owner or developer can purchase the credentials of a consultant to put together a report in support of having a habitat conservation buffer area that is less than what is called for in the stream table. This could result in a loophole for future developers to circumvent the buffer requirements. Commissioner Hall pointed out that the code provides explicit criteria that must be met in order for additional fish and wildlife habitat conservation areas to be designated. He recalled that in terms of buffer widths, City Attorney Sievers previously advised that science takes the City partway towards the appropriate decision, but not all the way. The City Attorney further advised that the City must also balance science with the protection of people, development, etc. Commissioner Hall said he does not believe a scientist would be able to turn the City's buffer requirements upside down. The City gets to decide the buffer requirements, and habitat conservation areas that are located within a stream or stream buffer would not require additional buffer area.

Mr. Stewart referred to Section 20.80.270 (Page 43 of the Staff Report) which states that certain criteria would have to be met in order to designate areas within the stream and wetland buffer areas as habitat conservation areas. Section 20.80.260 (Page 42 of the Staff Report) outlines how habitat conservation areas should be established, and Section 20.80.310 (Page 44 of the Staff Report) discusses the required buffers and how they should be established. He agreed with Commissioner Hall's suggestion that, in

addition to this mechanism, all of the buffers for streams and wetlands should also be designated as fish and wildlife habitat conservation areas, but no additional buffer would be required around the conservation area.

Commissioner Hall noted that streams, by definition, are not a critical area under the Growth Management Act. Therefore, the only State statutory authority the City has to protect streams is to designate them as fish and wildlife habitat conservation areas. Mr. Stewart pointed out that the City has a long-standing policy in their Comprehensive Plan which states that streams shall be designated as critical areas to acknowledge that they provide habitat for certain fish species.

Commissioner Sands said he is still unclear about why staff is proposing the deletion of certain items in the original definition for critical areas. He specifically referred to terms such as "soils having high water tables" and "highly acidic soil." Mr. Inghram reminded the Commission that the goal of the proposed amendments is to make the critical area ordinance more consistent with the Growth Management Act and the structure of the City's Development Code. For example, he pointed out that neither the Growth Management Act nor the Development Code provides language related to the protection of "highly acidic soils."

Vice Chair Piro suggested that any editing of the critical areas ordinance should be supplemented by a description of why the changes are being proposed and what the practical implications would be. It is important to communicate this information to the public. Commissioner Sands agreed that if staff is proposing the elimination of certain elements of the existing ordinance, they should provide documentation about why the changes are being proposed. If the record is not clear, the intent of the changes could be challenged later in court.

Commissioner McClelland requested that staff provide a few examples of where the code has been effective in its implementation. She asked if there are examples of where the City's mandated critical area protections have actually made a difference to the environment. Mr. Stewart explained that most development projects are constrained by and typically removed from the critical areas and their buffers. The City has adopted buffer enhancement and wildlife habitat mitigation plans as part of permit approval, and staff could provide copies of some of these plans to the Commissioners for their review.

Commissioner McClelland recalled a previous Commission discussion about the need for a focused and well-intended public education program where the City would document some of the projects that have been completed to protect the environment and how these protections are connected to the entire ecological system of the City. She would like the City to use signs to plant thoughts into people's minds about environmental issues and concerns. Mr. Stewart advised that the City employs a full-time environmental educator, Rica Cecil. Her job is to provide environmental education, and the Shoreline Master Plan that is currently before the City Council for approval includes \$4.2 million for habitat restoration.

Vice Chair Piro suggested that examples of comprehensive critical area stewardship plans would be of value to the Commission, as well. Mr. Stewart said the City has not completed any critical area stewardship plans to date. This concept is new and intended to be done in conjunction with view preservation and restoration. It is modeled after some of the plan exclusions in the King County

ordinance for agriculture, etc. where they allow exceptions for certain activities. Vice Chair Piro again requested examples of these model provisions.

Commissioner Broili expressed his belief that the City should try to do more than just match what the Growth Management Act requires. They should strive, at every opportunity, to enhance and strengthen the City's environmental ethic with regard to critical areas, land development, and other issues the Planning Commission must address. Deleting items from the ordinance could negate the issue from being addressed in the future. Terms such as "acidic soils" and "high water tables" were included in the ordinance for a reason. Just because the City hasn't addressed these issues in their code up to this point, does not mean they should be taken out of the ordinance.

Commissioner Broili referred to Section 20.20.22.F (Page 26 of the Staff Report), which indicates that the term "flood plain" would be changed to "flood hazard areas." He argued that a flood plain is a systemic ecosystem, while a flood hazard area is people oriented. He would like the Commission to discuss this proposed change further. Finally, Commissioner Broili recalled a point he made previously that best available science depends on the questions being asked. He pointed out that the term "no net loss" is used frequently throughout the proposed ordinance, and to him, this means the City would be just treading water. The system is already badly degraded, development continues to happen and population continues to grow. The City's goal should be restorative rather than "no net loss." He encouraged the Commissioners to think in terms of strengthening and restoring the environment. He referred to the Lidar map which shows where the watersheds were originally located. He pointed out that the watersheds on the Lidar map are much more extensive than what is identified on the stream inventory map. Parts of the watershed system have been lost. While he is not suggesting that people be moved off their lands, the City has the design tools and technology to do a far better job of protecting the natural critical areas and the uplands that support and sustain them.

Commissioner Sands asked staff to review the regulations associated with tree removal and trimming in critical areas versus non-critical areas. He would like to have this tied in with the concept of stewardship plans, as briefly discussed earlier. He questioned if the stewardship program that has been identified for views and trees would also allow someone to thin a forested area for fire prevention. Mr. Stewart explained that the Comprehensive Plan that was adopted in 1998 included a policy that the City should adopt tree protection regulations. The 2000 Development Code adopted a section regarding development standards for clearing activities, which regulated the removal of trees and ground cover. These standards established two types of rules for removal of significant trees. One set of rules applies to those parcels that were not located in critical areas, and the second set applies to parcels that are located in critical areas or their buffers. Generally, an owner of property outside a critical area can remove up to six significant trees per parcel during any three-year period, and there is no limit on the number of non-significant trees that can be removed.

Mr. Stewart further explained that when a site that is located outside of a critical area is developed, the applicant is required to retain at least 20 percent of the significant trees on a site if a clearing and grading permit is obtained from the City. An applicant of a site that includes some critical areas and/or critical area buffers must retain a minimum of 30 percent of the significant trees on the site. The City requires an inventory of significant trees as part of a development permit application. The City uses this inventory to calculate the number of trees that must be retained.

Mr. Stewart said it is important to also understand that there are six exceptions associated with the tree removal regulations. The one that has been utilized by a number of citizens is the exemption for emergency situations. Any tree or vegetation that is an immediate threat to health, safety, welfare or property may be removed without first requiring a permit regardless of any other provisions contained in the code. If possible, the code requires that trees be evaluated prior to removal using the most recently adopted method identified by the International Society of Arboriculture. He noted that the Innis Arden Reserve Group has utilized this provision to remove a large number of trees. He briefly reviewed the other exemptions that are listed in the code.

Commissioner Sands asked when tree trimming would be considered tree removal. Mr. Torpey referred to the Planning Director's interpretation that was issued in 2001 (Attachment 2 of the Staff Report). He explained that the International Society of Arbiculture defines trimming and topping. Topping is considered the same as removal of a tree, and trimming is limited to up to 30 percent of a tree's biomass. Anything more than that would be considered detrimental to the long-term health of the tree.

Mr. Stewart explained that the proposed language would add a provision to allow for the removal of up to six significant trees within a three-year period on properties that are located within a critical area if all of the functions and values of those trees can be preserved and enhanced.

Commissioner Sands summarized that there are no provisions for tree removal in non-critical areas to accommodate view preservation. Mr. Stewart stated that there are no exclusions that would distinguish between tree removal for view preservation and tree removal for any other purpose.

Mr. Torpey referred to the areas identified on the map as having a slope of 15 to 40 percent. He explained that, as per the draft ordinance, a property owner could apply for a clearing and grading permit (Type B) for these properties, but the City would require the applicant to provide professional reports from an arborists and a geotechnical engineer as to the stability of the soil during the tree removal and the replanting necessary to replace the function of the trees. These reports would be reviewed and either approved or denied by staff, and the staff's decision would be appealable by either the applicant or another person who may be affected. Mr. Torpey further explained that the current and draft ordinance would require a critical area reasonable use permit for tree removal in areas that have a slope of greater than 40 percent. If the property were owned by a utility or other public entity such as a water district, a critical areas special use permit would be required. In these situations, the staff would make a recommendation to the Hearing Examiner, who would make the final decision that is appealable to Superior Court.

Commissioner Sands clarified that all of the tree removal requirements would be triggered by the request for a permit. What if a property owner wants to remove a significant number of trees without submitting a permit application? Mr. Torpey said that a clearing and grading permit would be required for the removal of any tree from a critical area unless it was considered a hazardous tree. Commissioner Sands said this provision makes it important for a property owner to understand whether or not a property is located in a critical area.

Commissioner Sands requested further information about the proposed "stewardship plan" concept. Mr. Stewart referred to Section 20.80.030 on Page 33 of the Staff Report, which would add a new exception to the list of regulated activities. It states that view preservation and enhancement programs may be permitted in critical areas and their buffers if a critical area stewardship plan is approved as part of a clearing and grading permit and can meet specific criteria. First, the plan must result in no net loss of the functions and values of each critical area. Second, the plan must maintain or enhance the natural hydrologic systems on the site. Third, the plan must maintain, enhance or restore native vegetation on the site. And fourth, the plan must maintain habitat for fish and wildlife on the site and enhance the existing habitat.

Mr. Stewart said the intent of the proposed language in Section 20.80.030 is to allow a stewardship plan to be developed that would protect the functions and values of a critical area while also allowing for preservation and enhancement of views. It would require the same type of study and assurances that are currently provided under a clearing and grading permit. It would further broaden the City's authority to move into areas that are not covered, including 40 percent slopes and the buffers of the streams and wetlands.

Vice Chair Piro clarified that the new language would allow six significant trees to be removed from a critical area without any rationale, but with an assessment that the removal would not result in any net loss in function and value. He requested feedback from staff about why they are recommending the new language. Mr. Stewart said there are situations in the City where uphill neighbors have won court cases against downhill neighbors, ordering the downhill neighbors to remove trees that are located in critical areas or critical area buffers. In these cases, even though the property owners do not want to remove the trees, the City is requiring them to apply for permits to do so. These property owners are also required to provide the City with scientific studies, etc. The proposed language is intended to address these situations. There are also situations where the City receives reports of trees being cut on private or common properties, and the staff investigates these situations and attempts to resolve the problems. In addition, the City has received 142 hazardous tree reports, and they have rejected about 40 of them. He concluded that the City has spent a lot of time and energy wrestling with this issue.

Mr. Stewart further clarified that the proposed language is intended to tighten the definition for a hazardous tree to focus in on the reasonableness of the hazard. Some would argue that any tree is hazardous because it could fall at any point. The proposed language further defines the definition to state that the hazard must have the potential to result in the loss of a major or minor structural component of the tree that would either damage personal or public property or prevent access in the case of medical hardship. This language was pulled directly out of the King County definition for a hazardous tree.

Commissioner McClelland asked if the City has designated any landmark trees. Mr. Stewart said the code includes a provision that allows the City to designate landmark tree, and a proposal was submitted to the City. In this situation, the uphill neighbor was seeking to enforce covenants on the downhill neighbor, and the downhill neighbor or a friend nominated the tree as a landmark tree. He read the definition for a landmark tree and pointed out that once designated as a landmark tree, it can't be removed unless the applicant can meet the exception requirements of the section. He further said the language states that the Planning Director shall establish criteria and procedures for the designation of

landmark trees, which he has done via an administrative order. The standard and criteria include a provision that the owner and all parties with an interest in the property rights must sign off on the landmark tree application. If a tree can meet the criteria for designation, the application would be sent to the City Council for final approval.

Vice Chair Piro concluded that the way the language is proposed, the only reason a property owner would be allowed to cut down more than six trees is for view preservation or enhancement. He expressed his concern that the proposed language (Section 20.50.360) would not allow a property owner to thin out trees for purposes related to the health of the forested area. If a certified arborist report indicates that the tree removal would not have any impact on the slope and that the remaining trees would be healthier, the ordinance should allow this to occur. Mr. Stewart clarified that this section only applies for critical areas that have a slope of more than 40 percent. For properties with a slope of less than 40 percent, a clearing and grading permit could be obtained to allow the removal to occur.

Commissioner Kuboi asked who would determine if a property owner is entitled to the view preservation and enhancement provisions. Mr. Stewart said that any property owner or group of property owners could apply for a permit to remove trees for view preservation or enhancement. He said the intent of the view preservation and enhancement provision is to limit the scope and how it could be applied. Protection of views is a competing value with protection of the critical areas. The City does not want to allow the removal of trees in critical areas for any circumstance, but only for view enhancement or preservation. He emphasized that the view preservation program could be applied any where in the City. Commissioner Kuboi noted that since view is not defined, a person could create his or her own definition of what a view is. He felt the proposed language could result in potential abuse in the future.

Vice Chair Piro questioned who would decide whether or not a tree or group of trees would constitute a fire hazard. Mr. Stewart recalled that there was an urban wildfire along the Interurban Trail at about 160th Street. Some low growing vegetation caught on fire and got up into the conifers. It was a spectacular sight that occurred after a particularly dry spell. During the City's recent evaluation process, urban wildfires were identified as a potential hazard to the City, particularly in those areas that are heavily wooded. He suggested that adding an exemption or provision related to urban wildfire hazard mitigation would be appropriate.

Vice Chair Piro agrees that the Growth Management Act was a revolution for Washington State. He said he would like to see more information about some of the cases that speak about its potential conflicts with the standing covenants that predate the Growth Management Act. He said it would also be helpful to receive information from the Growth Hearings Board about cases that deal with situations where a provision in a covenant had been trumped by the Growth Management requirements.

Mr. Stewart explained that 1000 Friends of Washington has appealed the comprehensive plans of Normandy Park, Issaquah and Kent because they have zoning provisions of less than four dwelling units per acre. Mercer Island's plan will also be appealed once it is adopted. He said the issue for Shoreline is that there are restrictive covenants for Innis Arden and The Highlands that prohibit development in densities of four units per acre, even though the zoning code would allow for this density. He said it is his understanding that there is a case at the Shoreline appellant court level challenging the density provisions on a particular piece of property. The case is claiming that these types of restrictions violate

the Growth Management Act. There is also proposed legislation at both the house and the senate level clarifying the four dwelling units per acre requirement.

Commissioner Broili said that if the staff is going to create new language related to fire hazard issues, it is important to understand that a good fire management regime does not necessarily require the removal of trees. Instead, it should speak to removing fire ladders so that fires stay on the ground rather than crowning. At some point, they need to discuss the concept of having an urban forest management plan. This would allow the City to look at the issue holistically rather than lot-by-lot. He said there is a movement afoot in the broader regions of the area to think in these terms, and he encouraged the City to do the same.

Commissioner Hall asked if the public hearing in March would be based on the January 10th version of the Critical Area Ordinance or if adjustments would be made to the document first. Mr. Stewart suggested that no changes be made to the January 10th edition of the ordinance prior to the public hearing. However, it could be supplemented with the list of amendments that have been proposed. He noted that numerous copies of the ordinance have been sent out to citizens and groups, so it would be best to continue to use the original draft as the working copy for the public hearing.

Commissioner Broili voiced his concern that the Commission would not have an opportunity to completely review the draft ordinance prior to the public hearing, yet there are numerous issues the Commission still needs to discuss. Mr. Stewart said the document has been available to the public for review since January 10th, and the next step is to move into the public hearing process. Hopefully, they will receive numerous comments and suggested amendments from the public. The Commission will have an opportunity to deal with these comments as they move into their deliberations. Commissioner Broili pointed out that the ordinance is very intricate, and it was difficult for him to review it in just one week and come up with appropriate comments. The comments he provided were made after only a brief review, and were certainly not comprehensive. He sees the review process as going very slowly, but the timeline is actually quite constrained.

Mr. Torpey explained that the document the Commissioners received includes the complete version of Section 20.80, which is the critical areas section of the code. The document also included all other sections of the code that are being recommended for change. The definitions can be found in Section 20.20. The matrix that was provided identifies all of the sections of the code that were commented upon by Commissioners. Mr. Stewart suggested that if the Commissioners want to review the full context of the Critical Area Ordinance, they should have the entire Development Code available.

Commissioner Hall referred to the sections of the ordinance related to tree removal, and expressed his concern about the definition for a "hazardous tree." The words "immediate threat" were removed from the definition, and this could end up creating a loophole. Secondly, Commissioner Hall felt the Commission should further consider the option of including regulations related to Puget Sound in the City's Critical Area Ordinance. Lastly, Commissioner Hall referred to Section 20.80.330 (Page 48 of the Staff Report). He expressed his concern that the legal construction and interpretation of this section is too confusing. He noted that Item 1 uses the words "may," which is not enforceable from a legal standpoint. Perhaps Item 1 should require an applicant to meet all of the conditions. Mr. Inghram said that the listed conditions may or may not apply in all cases. He suggested that rather than trying to create

criteria that would apply to every case, the section could reference guidelines such as those prepared by the Puget Sound Action Team for low impact development. Commissioner Hall felt this would be appropriate as long as it is worded in a restrictive rather than a permissive manner. The staff agreed to work more on Section 20.80.330.

Commissioner McClelland suggested that the entire ordinance should be edited for readability. The document should first make it clear what the standards and requirements are, and then identify the opportunities for deviation. The remainder of the Commission agreed, as did the staff.

Mr. Stewart said another issue the Commission might want to consider is the future of water-based recreational activities on ponds or lakes. If a pond or lake has historically been used as a water-based recreation area for fishing, swimming, boating, beaches, etc., the Commission must consider whether or not the uses should be allowed within the buffer area. Staff's interpretation of the current ordinance does not allow this type of use, but the Commission could add it as an exclusion. Commissioner Hall said his interpretation of the ordinance is that passive, low-impact recreation uses such as swimming or walking would fall into the category of "other activities not mentioned above, which have a minimum impact." Mr. Stewart said it could be argued that these uses should be allowed to continue as pre-existing non-conforming situations if no changes are being proposed. But if changes are proposed, the current ordinance would no longer allow the recreational uses. He asked that the Commission provide direction to staff about whether or not this type of activity should be exempt from the buffer requirements. Mr. Torpey reported that the City of Seattle exempts all of their waterfront parks and public spaces as public facilities.

Mr. Torpey reconfirmed that the public hearing for the Critical Area Ordinance is scheduled to begin on March 17th.

7. REPORTS OF COMMITTEES AND COMMISSIONERS

Vice Chair Piro reported that he and Commissioner Hall attended a special meeting on February 10th with members of the City Council, Planning Commission and some community groups. One of the key issues raised was related to amendments to the Comprehensive Plan. Concern was expressed about whether past amendments actually strengthen previous policies or weakened them. He asked that staff carefully identify and express the intent of future proposed changes so the public has a clear understanding. Mr. Stewart agreed that a number of issues were identified where a simple clarification from staff would have removed much of the anxiety and fear.

Commissioner McClelland thanked the staff for organizing the Cottage Housing Tour on February 12th. She said the tour was beneficial because they were able to go inside the houses and meet some of the residents. They received excellent exposure to the construction materials, site issues, neighborhood issues, etc. Commissioner Kuboi said he was puzzled at the amount of attention that was spent reviewing the interior of the properties when the bulk of the public's concern was related to exterior issues such as parking and traffic impacts. He recalled a recurring concern from the surrounding communities about neighborhood degradation yet he noticed that some of the properties are now being rented out. Chair Harris recalled that the major concern expressed by surrounding property owners was

that the properties would all be developed by an absentee landlord and rented out, and this has not occurred.

Commissioner Hall requested an update from Mr. Stewart regarding staffing vacancies and new hires. Mr. Stewart reported that the City Manager recently announced the hiring of an economic development manager, and the Planning Department has hired a new technical assistant who starts on March 3rd. In addition, Mr. MacCready has resigned to accept a new position as a planner for Snohomish County, and his position will be open for applications soon. The City's building official has also resigned, so they are recruiting applicants for this position, as well. They are also interviewing for an Aurora Corridor Planner project position.

Chair Harris announced that the Shoreline 10th Anniversary Committee is moving forward with plans for celebration. An impressive list of City accomplishments has been compiled, and they are in the process of creating a calendar that identifies community events that are scheduled throughout the year.

8. UNFINISHED BUSINESS

Planning Commission Retreat

Mr. Stewart recalled that staff recently distributed a document outlining options for the retreat. The Commission scheduled the retreat for March 10th starting at 6:00 p.m. Pizza would be served for dinner.

Commissioner Hall referred to the list of possible discussion topics and said he feels the most valuable topics would include the Planning Commission's role compared to the City Council's role, Planning Commission expectations, and how the Commissioners can work together more effectively as a group. The other items on the list could be discussed as workshop items at a normal Commission meeting. The remainder of the Commission concurred. Commissioner Kuboi suggested that Commissioners come to the retreat prepared to discuss their issues and concerns relate to each topic. The Commission continued to discuss ideas for how they could focus the retreat discussions on specific concerns and issues.

The Commissioners agreed to submit their written comments regarding each discussion topic to Commissioner Kuboi by February 24th. He agreed to compile the comments and forward them to each of the Commissioners prior to the retreat. The Commission felt this would enable them to narrow their discussions and resolve specific issues.

The Commission discussed whether or not it would be appropriate for the Commission to self-facilitate the retreat discussions. Mr. Stewart expressed his concern about a Commissioner acting as facilitator. Another option would be to find a City employee who has facilitation training to facilitate the actual retreat discussions as an independent and neutral party. He also suggested that perhaps three topics might be too many items to discuss in just one evening. He suggested that the topics be narrowed to just two. The Commission agreed to provide written comments on all three of the items previously identified, recognizing that they would discuss and resolve Item 4 (Planning Commission expectations) first. They also agreed that staff should find a City employee to facilitate the retreat discussions. Mr. Stewart said he would also invite all of the staff members who work on Planning Commission business to participate in the discussion.

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9. NEW BUSINESS

There was no new business scheduled on the agenda.

10. ANNOUNCEMENTS

Mr. Stewart reported that the City Council received over 600 individual comments related to the Comprehensive Plan amendments. They have reviewed 130 of them and identified 50 for further discussion. They still have to review the more than 450 remaining comments. A second public hearing was held by the City Council, where they heard many of the same comments that have been expressed previously. In addition, the Innis Arden Neighborhood Group came forward with their concern that they did not receive notice of the meeting the City Council held with the Sno-King Environmental Council. They requested a special meeting with the City Council, as well. He said he is not optimistic that the plan will be adopted by February 28th, as originally planned. The Commission briefly reviewed the Comprehensive Plan public hearings that have been conducted by the City Council to date.

Mr. Stewart reported that Commissioner McClelland provided information regarding CTED's interpretation of the 2004-2005 Comprehensive Plan update. Commissioner McClelland said she obtained the opinion from the City of Carnation because they are still working on their 2004 update, too. CTED has taken the position, which is not a legal position, that if cities adopt their 2004 amendments early enough in 2005 and their 2005 docket has been established, they can still make amendments in 2005. Phil Olbrechts, the City Attorney, agreed with this interpretation. Mr. Stewart said staff is seeking their own interpretation from CTED regarding this issue.

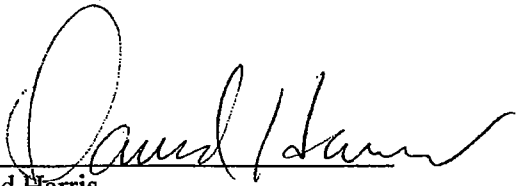
Commissioner Hall expressed his concern that the Planning Commission not take any action that would distract the City Council from consummating the significant Comprehensive Plan update that is currently on the table. Mr. Stewart said his interpretation is that the 2005 amendments would not be approved prior to the 2004 update being approved. However, it is possible that approval of the updates from both 2004 and 2005 could occur at the same time. Commissioner Hall expressed his concern about the Commission holding public hearings and deliberations on proposed 2005 Comprehensive Plan amendments prior to final adoption of the 2004 Comprehensive Plan update. He felt the Commission has an obligation to defend the public's trust, and he would not support a staff recommendation to roll the site-specific Comprehensive Plan amendment for the south side of Echo Lake into the major 2004 Comprehensive Plan update. Commissioner McClelland agreed that rolling a 2005 docket issue into the 2004 update could be dangerous, and she would not support a proposal of this type, either.

11. AGENDA FOR NEXT MEETING

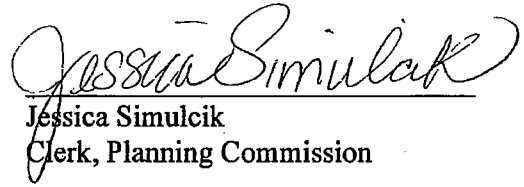
The Commissioners had no additional comments to make regarding the agenda for the next meeting.

12. ADJOURNMENT

The meeting was adjourned at 10:40 p.m.



David Harris
Chair, Planning Commission



Jessica Simulcik
Clerk, Planning Commission

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION SUMMARY MINUTES OF REGULAR MEETING

March 17, 2005
7:00 P.M.

Shoreline Conference Center
Board Room

PRESENT

Chair Harris
Commissioner Sands
Commissioner McClelland
Commissioner Kuboi
Commissioner Phisuthikul
Commissioner Hall
Commissioner Broili

STAFF PRESENT

Tim Stewart, Director, Planning & Development Services
Andrea Spencer, Senior Planner, Planning & Development Services
Matt Torpey, Planner II, Planning & Development Services
David Pyle, Planner I, Planning & Development Services
Jessica Simulcik, Planning Commission Clerk

ABSENT

Vice Chair Piro
Commissioner MacCully

1. CALL TO ORDER

The regular meeting was called to order at 7:03 p.m. by Chair Harris, who presided.

2. ROLL CALL

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

3. APPROVAL OF AGENDA

COMMISSIONER HALL MOVED THAT A "DIRECTOR'S REPORT" BE ADDED TO THE AGENDA IMMEDIATELY BEFORE APPROVAL OF THE MINUTES AND THAT THE REMAINDER OF THE AGENDA BE APPROVED AS PROPOSED. COMMISSIONER SANDS SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

4. DIRECTOR'S REPORT

Mr. Stewart referred the Commissioners to a yellow memorandum from the staff, which provides additional direction to the Commission about what might be expected for tonight's meeting. Staff is interested in receiving comments and feedback from the Commission, and they hope this tool will be useful to the Commission as they move forward.

Next, Mr. Stewart referred the Commission to the memorandum from the City Attorney, which includes both a cover memorandum as well as a copy of the appellant court decision on the Gaston Case. Because this long-standing case deals directly with the issue of the Critical Area Ordinance, he encouraged the Commissioners to carefully review both of the documents. He said staff could also arrange an opportunity for the Commissioners to review the case with the City Attorney.

Mr. Stewart referenced a memorandum he sent to the Commission, which includes a decision by the City's Hearing Examiner regarding an appeal to a SEPA Determination related to tree cutting in Innis Arden. He said this case provides a very good example of how the decision-making process in Shoreline works on a critical area. An appeal was submitted by some of the neighbors, and the Hearing Examiner conducted a 5½-hour public hearing on the matter. Although five geotechnical witnesses testified throughout the case, the Hearing Examiner remanded it back for additional information. This is a good example of how the review process provides a second set of eyes and allows for continued debate and discussion of contentious issues related to critical areas.

Lastly, Mr. Stewart introduced Ray Allshouse, the City's new Building Official. He is the former building official in Snohomish County.

5. APPROVAL OF MINUTES

The minutes of February 17, 2005 were approved as amended, and the minutes of March 3, 2005 were approved as written.

6. GENERAL PUBLIC COMMENT

Gini Paulsen Ph.D., 16238 -12th Northeast, said she recently provided each of the Planning Commissioners with a copy of report on Easter Island, which illustrates what can happen when a culture or society ignores the carrying capacity of its own particular environment. She emphasized that this is not just something that happens on Easter Island. The world is going to be radically different from that which has existed in the past because of population increases, declining resources, and an increase in pollution. She suggested that the environment and the economy are on a collision course. She referred to a book written by Jared Diamond about how societies choose to fail or succeed. The book provides numerous case examples of how certain cultures have managed to destroy their environment, and in the process destroy themselves. In a few instances, these cultures have managed to engage in environmentally protective strategies that have been very successful in forcing even major corporations to adhere to necessary environmental protections. She urged the Commission to read these two pieces of literature to help them understand what the City will be facing in the coming century.

Robert Barta, 15703 – 1st Avenue Northwest, said he supports the proposal presented by Mr. Daher for purchasing the current City Hall facility. He said he is a member of the Shoreline Emergency Management Council and has just recently passed the Ham Operator's Test and will become a full-fledged member of the Shoreline Firefighters Ham Operators Group. He said he participated on committees before the City was incorporated, and one of the concepts considered at that time was the creation of a "town center." He pointed out that Edmonds and Lake Forest Park both have town centers. If they want to have a viable City, they need to have a City with a heart. That is why he supports Mr. Daher's proposal to locate City Hall close to the center of town. City Hall is a part of the emergency management scenario, and the City Manager is one of the top people that would be contacted in the case of emergency. Locating the City Hall next to the Fire Department would be a good match.

Pat Crawford, 2326 North 155th, said that she could also provide each of the Commissioners with full copies of the Gaston Decision. Ms. Crawford referred to the last two sentences of the first paragraph on Page 5 of the Commission's packet, which is Page 3 of the February 17th meeting minutes. She said this sentence is not a good representative of what she was trying to say to the Commission. The intent of her comment was that there is a distinct difference between ground water and surface water, and waters are labeled by where they originate from. She referred to Page 16 of the Gaston Decision, which states that "It is undisputed that Thornton Creek was a naturally occurring stream prior to construction where surface waters produced defined channels or beds. It is no consequence that the artificial watercourse may have changed the course of the naturally occurring stream. It is undisputed that Thornton Creek enters the Gaston Property in the underground culvert and exists in the culvert on the Crawford's property. It is also undisputed that Thornton Creek is a Class II Stream before it enters and after it exits the culvert." She said she agrees and the trial court concluded that the water does not cease being part of Thornton Creek while passing through the culvert. As part of the Thornton Creek culvert, the section under the Gaston's property was, and remains, part of a Class II Stream. It was clearly erroneous for the Hearing Examiner to conclude otherwise. Ms. Crawford clarified that the term "surface water" is a widely accepted term for water that originates on the surface, and it doesn't lose its classification when it goes into a pipe. She asked that the minutes be corrected. Mr. Stewart advised that Ms. Crawford's comments would be included in the next set of minutes.

Brian Derdowski, 20 East Sunset Way, Issaquah, President of Public Interest Associates, said he works with Planning Commissions and City Councils throughout the State and served for ten years on the Metropolitan King County Council throughout the 90's. In 1990 and 1991, he was the chairman of the Growth Management Committee and was the prime sponsor for the sensitive areas ordinance, the first such ordinance in the State. He said he was also the chairman of the Growth Management Committee again in 1998 and 1999. He advised that the Planning Commission is a part of the legislative branch, and their prime duty is to abet issues for the City Council. In the course of doing this, they have been charged with taking advice and information from the City staff, the City Council, the public and any other appropriate source. He said that when the County Council started working on the sensitive areas ordinance in 1990, they had only one attorney from the Prosecuting Attorney's Office to work with them. Their litigator was also their advisor on legal issues. This created a horrible situation that the County Council eventually came to understand. They hired a couple of attorneys from the Prosecuting Attorney's Office, to specifically advise the County Council separately. He explained that there is an

inherent conflict of interest when councils or commissions are placed in a situation of trying to both defend a decision and advise what the range of options are.

Mr. Derdowski expressed his belief that the Planning Commission has a culture of receiving advice that is overly risk adverse, does not serve the public interest, and is arguably incorrect. He urged the Commission to consider mechanisms for diversifying their input. He said he has spent a lot of time reviewing the City's Comprehensive Plan and has found errors in procedure and substance that would never have happened if the Commission had been properly briefed and prepared. He said he does not doubt that the professional City Staff is doing their best in their limited circumstances, but he urged the Commission to build within their system a method for obtaining alternative and diversified advice that goes beyond the two or three minutes extended to the public for comment.

Elaine Phelps, 17238 – 10th Northwest, said she was one of the appellants for the Innis Arden tree removal proposal that was referenced by Mr. Stewart. She said that while staff described the process as "another set of eyes," it is important for the Commission to remember that the appellants had to pay thousands of dollars to make the appeal. In addition to the filing fee, they had to pay experts and consultants. She concluded that if the City had done a better job of having the appropriate experts submit information, a different decision would have likely been made. She said it should not be left up to the private citizens to spend significant money on appeals. It is up to the City to do things right in the first place. She urged the Commission to find ways for the staff to be more insightful.

Janet Way, 940 Northeast 147th, asked that, prior to the Critical Area Ordinance public hearing, staff provide the public with copies of the three documents that Mr. Stewart referenced at the beginning of the meeting. Mr. Stewart explained that the public hearing information packet the Commissioners received are part of the public record and can be accessed by any citizen. Ms. Way said that if the additional documents provided by Mr. Stewart are pertinent to the Critical Area Ordinance, they should be made available to the public and not just the Commission. For instance, she felt the information related to the Gaston Decision would be pertinent to the public hearing. Commissioner McClelland pointed out that the Commissioners just received the documents and have not had an opportunity to read them yet, either. They would not be germane to the public hearing. Ms. Way disagreed and said she would be citing both of the documents during her comments at the hearing. Commissioner McClelland gave her copies of the documents to Ms. Way.

7. STAFF REPORTS

Public Hearing on Critical Areas Ordinance Update

Matt Torpey, Project Manager for the Critical Area Ordinance Update, provided a brief overview of the draft Critical Area Ordinance. He provided an overview of the changes as follows:

- **Significant increases in wetland replacement and enhancement ratios:** Mr. Torpey pointed out for the most common types of wetlands (Type II, Type III and Type IV), the increases would be quite significant. He noted that the City does not have any Type I Wetlands. He explained that because wetland enhancement is known to be more viable than actual wetland creation, a larger enhancement

ratio would be appropriate. He emphasized that the proposed ratios are consistent with those of the Department of Ecology.

- **Significant increases in stream and wetland buffer requirements, ranging from 15 percent to 250 percent:** Mr. Torpey used a graph that identifies the proposed wetland buffers compared to the existing ones. Some of the most significant changes are in the Type III and Type IV Wetland categories. There would be a 30 percent increase in the proposed and minimum standards for Type III Wetlands, and the increase would be 150 to 200 percent for Type IV Wetlands. He explained that a standard buffer is the buffer that would be required if a property owner wanted to develop a property or cut a tree, etc. without providing mitigation for the wetland. As long as development stays away from the standard wetland buffer, no mitigation would be required. The minimum buffer applies to situations where property owners propose mitigation measures such as replanting or enhancement. Mr. Torpey said the update proposes an increase in all types of stream buffers, but he noted that the City does not have any Type I Streams. Significant increases have been proposed for Type II, III and IV Streams.
- **A new provision encouraging the restoration of piped and denigrated watercourses:** Mr. Torpey advised that, currently, stream restoration is discouraged. If a developer were to propose stream restoration as part of a project, they would be subject to the new buffer-width requirements. The proposed change would encourage the daylighting of streams without mandating a full-buffer requirement.
- **A new provision allowing for view preservation and enhancement in critical areas and buffers through a Critical Area Stewardship Plan:** Mr. Torpey explained that a Critical Area Stewardship Plan is proposed in the draft update in order to retain and restore views when ALL functions and values of the critical area would be retained. The functions and values would be retained through the review and recommendation of as many professionals as needed particular to the critical area (i.e. geotechnical engineers, stream biologists, wetland biologists, and arborists).

Mr. Torpey said staff anticipates the Commission would receive a large number of public comments regarding the Critical Area Stewardship Plan, trees in general, and the definition of hazard trees. They would also likely hear public comments regarding the fish and wildlife habitat areas and the proposed definitions for "stream," and "salmonid fish use."

Mr. Torpey said the draft revisions include proposals that the staff and Commission identified prior to the public hearing: They include the following:

- All streams, wetlands and their buffers should be identified as fish and wildlife habitat areas.
- Puget Sound and the shoreline should be identified as a fish and wildlife habitat area.
- The definition of "stream" should be expanded to allow proposals for private dam removal to be considered when assessing fish passability. This was omitted from the draft code. But if they remove private barriers and make streams passable to the Sound or Lake Washington, they should be considered fish passable.

Chair Harris briefly reviewed the public hearing process and opened the hearing to public testimony.

Gene Maddox, 16631 – 10th Avenue Northwest, said he provided each of the Commissioners with a copy of the Task 230 Report, submitted as Exhibit 6, which is a King County report that centers on the area of Innis Arden very well. He referred to the definitions in section 20.20 of the draft ordinance, which shows a critical area to be an area of landslide hazards, seismic hazards, erosion hazards, stream and corridor areas. He noted that the map on Page 3 of his exhibit identifies most of the Innis Arden area as both a slide hazard area and an erosion hazard area. In addition, Innis Arden is also an area with many stream drainages, and there are even a few areas that are identified as seismic hazards. He said he has lived in the area since 1958 and has found that Boeing Creek has suffered terribly due to mismanagement or no management. There is one area that has slid so violently, that it snapped the top of the trees off as it came down. This is not a steep area, but one that was washed out from underneath.

Mr. Maddox pointed out that the Innis Arden area has become a war zone over trees. The Innis Arden Club has been trying to get a permit from the City to cut every tree they can. They are absolutely destroying the reserves and letting everything fall into the streambeds. There has been little or no oversight for what they have been doing. Because of the sensitive nature of the area, he said he would like the City to stop the tree cutting in Innis Arden until a competent authority such as the Planning Commission can review it.

Wayne Cottingham, 17228 – 10th Avenue Northwest, provided a PowerPoint Slide Show of various pictures taken in the Innis Arden area. The pictures illustrated a ravine that is about 1/3 mile long and drops from 400 feet to sea level. He advised that there are four separate parks in the Innis Arden area: Bear, Grouse, Blue Heron, and Running Water. To illustrate the significant change that has occurred in the area, he provided 1999 aerial photographs of the Grouse Reserve and other areas along the steep ravine and compared them to aerial photograph of the same areas in 2004 and 2005. Mr. Cottingham said he is an engineer by profession and has lived in the City of Shoreline for 40 years. He said the pictures he provided illustrate what City exceptions, coupled with money driven by views, can do. He said it is important for the City to tighten their regulations rather than allowing so many exceptions to protect views. He provided each of the Commissioners, as well as the Planning Commission Clerk, a disk containing his PowerPoint presentation (Exhibit 7).

Leon Zainveld, 17120 – 13th Avenue Northwest, said he has been a resident of Innis Arden for more than 18 years and has worked within county government in property systems for over ten years. He noted that more than 130 trees in the Innis Arden forested reserves have been decimated by removal or snagging since late 2003 on the basis that they were allegedly hazardous. Because Innis Arden is located on a hillside, he said he is concerned that it could be a site for a disastrous mudslide as a result of tree cutting. He noted that on February 14th, a few Innis Arden Club Board supporters testified to the City Council that they were concerned about decreased property values due to some perceived loss of view. However, he challenged anyone to provide a valid King County assessment that shows that any Innis Arden property has overall decreased in value over the last ten years, let alone due to some perceived loss of view. The particular property referenced at the City Council meeting didn't lose \$90,000 in value

as the property owner claimed, but increased in overall value by more than 80 percent. The factual trend is that property values rise for nice houses in stable neighborhoods.

Mr. Zainveld respectfully requested that the City incorporate language into the Comprehensive Plan and the Critical Area Ordinance that applicants for tree cutting for view preservation be required to provide substantial evidence that they once had a better view when they purchased their home. He further asked that the Planning Commission not increase the City's liability and endanger homeowners to benefit a small group of greedy homeowners by sustaining any loopholes in the Critical Area Ordinance or the Comprehensive Plan that could allow for abuses of City environmental processes or applications.

John Lombard, 10801 – 112th Avenue Northeast, Seattle, 98125, said he represents the Thornton Creek Alliance. He referenced a letter (Exhibit 1) that was already submitted to the Commission outlining the Alliance's concerns. First, the Alliance is concerned that there are no buffers proposed for the marine shorelines. While staff may argue that the shorelines can be dealt with in the updated Shoreline Master Program, he said he does not believe that is the case. The Growth Management Act requires the City to protect the functions and values of critical areas, including the Puget Sound shoreline. Secondly, Mr. Lombard said that the proposal ignores best available science for wetlands, particularly in the recommendations from the Department of Ecology for the classification of wetlands, buffers, mitigation, etc.

Mr. Lombard said the Alliance shares many of the concerns related to tree removal that citizens have already raised. The proposed ordinance presumes that mature trees can be removed with no net loss of functions, but this presumption is false. Mr. Lombard said the Alliance believes there should be more and clearer criteria for reducing the stream and wetland buffers in return for restoration. They feel this is an important and practical incentive, and they do not oppose the overall principle. But right now, there is essentially either full or minimum buffer, and the Alliance feels there should be very substantial restoration required as a step down to the minimum.

Mr. Lombard advised that the wetland buffers proposed in the ordinance require that the development itself be low impact to allow the reduction in buffer. The Alliance supports this proposal, and would like the same criteria applied to streams. The Alliance supports the incentives in the proposed ordinance for daylighting creeks, but there should be more of them. The City of Seattle has been addressing some similar issues in their proposed update, and they are including a number of incentives that the City of Shoreline could also include. The City of Seattle also has existing language that protects piped streams from being built over, and they would like this added to Shoreline's ordinance, as well.

Nancy Rust, 18747 Ridgefield Road Northwest, said she has lived in Innis Arden for 45 years. She is a former State Legislator and one of the original sponsors of the Growth Management Act. When the Act was written, only the growth counties were required to plan. However, it specified that all counties and the cities within them, regardless of whether they were required to plan, had to identify their critical areas and adopt ordinances to protect them. They felt this was so important to be done first. She emphasized that it is the City's duty to protect critical areas. She said she was disappointed to read that the City was considering exemptions for view preservation since the City should be trying to strengthen the act rather than weakening it. She said she realizes that conditions would be imposed in order to

obtain the exemption, but even scientists disagree about what is appropriate and what is not. She noted that other cities across the country are strengthening their ordinances, and the City of Shoreline should do the same. Weakening the ordinance to allow tree cutting for private gain is wrong.

Betty Ward, 18306 Ridgefield Road Northwest, said she has lived in Innis Arden for 50 years. She said she has owned three homes and each time she has moved to improve her view of the Sound and the Mountains. She now lives on Ridgefield Road across from the Grouse Reserve, and she has watched her view erode over the past 33 years due to the trees growing up in the Reserve, as well as on neighboring properties. She values her view as well as the environment, which is why she participated in a vegetation management plan in the Grouse Reserve, along with several of her neighbors. At great personal expense, they have met all the requirements of the City and planted over 2,000 plants to replace the trees that were cut. She said she supports the Critical Area Stewardship Program that is being proposed by the City because it formalizes a system that is similar to the vegetation management plan that was implemented in the Grouse Reserve. She said the residents in her area view their reserve as a model for further view restoration. She concluded by stating that they simply want to restore the views that they have lost over the past 32 years, and the proposed plan would help their efforts.

Roger Lowell, 18384 Ridgefield Road Northwest, said that when his family moved from Los Angeles, they searched all of Seattle and the suburbs, settling in Shoreline because of its schools, parks, views, support for families, and sense of community. He said he supports the Critical Area Stewardship Plan concept that has been proposed by the City staff. He explained that, recently, his neighborhood has been fractured over the community's stewardship of its communal resources and private properties. The City has created an overbearing bureaucracy, frustrating the efforts of citizens to maintain their views. He asked that the Planning Board give favorable consideration to the Critical Areas Stewardship Plan that has been proposed. He concluded by reminding the Commission that Shoreline is an urban area that should be managed as such. They should stop people from feeling like they have to move to the suburbs to get rid of the bureaucracy and create even a greater environmental insult. He pointed out that Innis Arden has a board, which is duly elected by the community in conjunction with the RCW's of the State of Washington. He asked that as the City deals with this community, they work with the Board. Individuals within the community use scare tactics and false accusations to further their private agendas. He expressed his belief that the plan submitted to the Commission is good and has the potential to heal the community.

Vicki Westberg, 1231 Northeast 148th Street, referred to the January 20, 2005 Planning Commission Item 6A, Attachment 2, pages 40-48. She submitted a copy of the document as Exhibit 8 and made the following points:

- Concerning wetland replacement ratios, the Commission should be made aware that 95 percent of them do not succeed.
- The language on Page 43 (based on the recommendation of a wetlands report that includes best available science and was prepared by a qualified professional) sounds good, but since the professional would be hired by the developer, the findings would be biased. She questioned what guarantee there would be that the monitoring reports would be accurate.

- Item G.2 on Page 46 states that in the event that a mitigation project is inadequate or fails, a performance or maintenance bond would be required to ensure the applicant's compliance with the terms of the mitigation agreement. It further states that it shall equal 125 percent of the cost of the mitigation project for a minimum of five years of monitoring.
- Item 3.d on Page 47 states that monitoring reports must be prepared by a qualified consultant and reviewed by the City or a consultant retained by the City. The City of Shoreline has exhibited, in every instance, a strong bias towards the developer, which presents a conflict of interest.
- What are the penalties if the builder does not comply or the mitigation efforts do not succeed? The development would have already been completed and sold by that time. The developer could forfeit his bond, walk away, and the citizens and natural heritage would lose again.
- We need to have oversight so that development works with the citizens and not against them.

John Hollinrake, 1048 Innis Arden Drive, said he lives in Innis Arden. He said he has had an opportunity to work with the City staff and has found them to be very knowledgeable and able to provide a great service to the community. He said he resents the fact that Mr. Derdowsky comes all the way from Issaquah to criticize the City's staff. He said he purchased an acre of property that is adjacent to one of the common areas, which was an ecological nightmare. A large maple tree fell, smashing his storage shed and destroying a large area of his vegetation. One of his trees has fallen across a hiking trail, and two of his neighbor's trees have fallen onto his property, destroying his cherry tree. A total of seven trees have fallen on his property, and before he moved into his home, eight trees snapped in half. This situation happens all throughout the Running Water Reserve, which is located along his property. Every time there is a windstorm, the trees sway, pieces fall off of them and trees fall into each other. He said Mr. Cottingham's pictures left out the fact that he spent over \$2,000 taking out invasive species such as blackberries, ivy, etc. So far, he has planted 60 plants, and he plans to do a lot more. He has put down extensive amounts of mulch, and he will continue to remove invasive species. He has gone through an expensive process to have a professional evaluation of the trees and the hazardous trees removed. Many of the trees lean towards his house and his yard. Mr. Cottingham's pictures also do not show that in the Grouse Reserve, over 2,000 plants have been planted to replace many of the trees that were in very bad shape. He encouraged the Commissioners to visit the areas to view the situation.

Mr. Hollinrake concluded by expressing his belief that the staff has made some excellent recommendations to deal with issues related to view. Views are very important to the residents of Innis Arden. They provide a lot of enjoyment and are the reason that many people moved there in the first place. He suggested that the City should deal with hazardous trees to protect life and not just buildings and properties, since this is the government's job.

Al Wagar, 17076 – 10th Avenue Northwest, said he supports Section 20.80.030(j), which provides for a Critical Areas Stewardship Plan. As a resident of Innis Arden, he said he has watched the tree versus view issue go largely unresolved over the past several years. The proposed stewardship plan would allow the City to meet its responsibility, and it would also allow flexibility for the residents in the community to remove problematic trees and replace them with others that provide the same functions. Secondly, Mr. Wagar proposed that the Commission amend Section 20.20.024 (Definition of Hazardous Trees) to include a fourth element to read, "fall on a developed trail." He also suggested that the phrase,

"or modifying them to make them non-hazardous" be added as well. He submitted his recommended language changes to the Planning Commission Clerk as an Exhibit 2.

Pat Crawford, 2326 North 155th, provided each of the Commissioners with a copy of the Gaston Decision (Exhibit 9). She said it is the City's duty to protect the environment, and this includes saying no to some people. She said she doesn't understand how people in urban areas think they don't need to bear part of the burden for the critical areas in the Growth Management Act. For example, there are many people in Forks (fisherman, hunters, loggers) that would love to restore what they have lost over the last 33 years. It would truly not be fair for the City of Shoreline residents to not make sacrifices but ask people in the rural areas to take care of "God's Country." She reminded the Commission that the critical areas were developed so that cities and counties could figure out how to protect them. Critical areas are the most important because cities cannot get their environment back. It is impossible to replace the function of a significant tree with a replacement tree. It is time for the citizens of Shoreline to make some sacrifices, including views, to protect the environment.

Ms. Crawford pointed out that the Gaston Decision took five years and hundreds of thousands of dollars of her family's money when the issue could have all been solved at the level of permitting. She pointed out that the proposed changes would merely add 15 feet to every existing buffer, which is basically just incorporating the setbacks. The proposal would not enlarge the stream buffer, but staff is twisting the words around to make it look like the ordinance would increase the protection.

Tim Crawford, 2326 North 155th, said he is always outraged when he comes to the Planning Commission meetings. He noted that the City staff alleges that there are other residents, besides himself, who have dams on their properties. He questioned where these properties are located. He said his attorney entered a supplemental brief at the appellant level over that issue, and he is really getting tired of it. He is tired of hearing people complain about trees blocking their view when he had to spend a lot of money to appeal the Gaston Project. He said his general comments would be addressed by a letter from his attorney, but he asked "who the hell else has a dam on a fish stream, claimed by the City, but the Crawfords?"

Mr. Crawford said he is saddened to think that the City is considering an option that would treat trees the same way as streams. He quoted a recent appellant who said, "Well, they won't be able to vilify us the way they have you." And damned if they didn't. He said he understands that the people from Innis Arden can be ignored, and he has seen it happen. But he hopes the people who want to save the green living things can prevail. He said he and his wife concur with John Lombard's statements.

Elaine Phelps, 17238 – 10th Avenue Northwest, said she has lived in Innis Arden for 40 years. She pointed out that the Grouse Reserve vegetation plan was never submitted under the Innis Arden vegetation management plan. It was submitted with a specific statement that it was not in accordance with the vegetation management plan. The City approved it nonetheless, even though it violated almost every provision of the vegetation management plan. That is why she is so skeptical about the concept of a Critical Area Stewardship Plan.

Ms. Phelps asked if the Commission would accept written comments after the public hearing. She said that when she moved into Innis Arden, there were songbirds galore and lots of other wild creatures. But they are gone. She doesn't have a view, and whether or not the trees come down would not impact her perspective one way or another. But it would impact her surroundings and the environment altogether. She questioned how one person could introduce this type of element into a critical area ordinance, since views have nothing to do with preserving critical areas. This element would, in fact, destroy the critical areas, and that is what has been going on in Innis Arden. View preservation should not be part of the ordinance, since the purpose of the ordinance is to promote efforts that will prevent or eliminate damage to the environment and biosphere.

Paul Blauert, 835 – 17th Place Northwest, provided copies of the University of Washington Forestry Report to each of the Commissioners (Exhibit 10). He said the document was introduced as an exhibit in their appeal to the Hearing Examiner regarding tree cutting in Innis Arden. He asked that the report be made a part of the record and that the entire Hearing Examiner's record be adopted by reference. Mr. Blauert said he is not against cutting trees to protect views, but he is in favor of protecting the sensitive areas. He is against cutting down healthy trees, claiming they are hazardous. He is also against clear cutting the reserves and replacing significant trees with small ones. Mr. Blauert asked that the Commission carefully review the Hearing Examiner's decision, especially the last two pages. They will find that the City has incorrectly summarized the report. The City's summary indicates that the third party report carried the weight. He pointed out that while the City was initially on the right track when they asked for an independent report, under pressure from the applicant, they agreed to accept the applicant's report for the third party. He recommended that the City have an approved panel of experts, and that each case be randomly assigned. He said the Hearing Examiner's Report demonstrates that the City did a poor job of evaluating the application.

Lastly, Mr. Blauert provided a copy of the Innis Arden Bulletin (Exhibit 11), which is quite misleading and inflammatory. He asked that it be made part of the record, as well. He noted that not one of the pro-view people made a comment about the need to protect the sensitive areas. However, it is the City's duty to guard these areas. The view provision would weaken the ordinance, and the Commission must decide if that is appropriate or not.

Janet Way, 940 Northeast 147th Street, asked that the Commission allow her extra time since she is speaking on behalf of three groups: Sno-King Environmental Council, Thornton Creek Legal Defense Fund and Paramount Park Neighborhood Group. Someone in the audience objected to Ms. Way being given more time to present her views than others in the audience were allowed. He noted that it is her second time to speak before the Commission, and he said he resents outside experts coming in to speak for groups. Ms. Way pointed out that she is not an outside expert. Chair Harris explained that when Ms. Way spoke before the Commission earlier in the meeting, she was doing so as part of the "General Public Comment" portion of the agenda. She has not had an opportunity to speak specifically regarding the Critical Area Ordinance. According to Commission rules, because she represents three groups, she would be allowed to have five minutes to speak.

Ms. Way congratulated the Innis Arden group that worked to protect the trees. Next, Ms. Way urged the Commission to thoughtfully examine all of the proposals contained in the draft ordinance and read all

the comments. They must also consider that there are basic standards and benchmarks the State Government has been seeking. They must establish that there are some things that cannot be sacrificed. The idea that the City can balance the environment with all the other values can only be true if they start with the basic benchmarks.

Ms. Way said her groups object to the definition that is proposed in Section 20.20.046, which states that "Those areas in the City of Shoreline where open surface waters produce a defined channel or bed, not including irrigation ditches or surface runoff devices or other entirely artificial open watercourses unless they are used by salmonids or used to convey streams naturally occurring prior to construction." She referred to the recent appellant court case (Gaston Decision), which speaks to this issue. If a creek comes in one end of a pipe and goes out the other end, it is not necessarily considered an open watercourse, but it is a stream established by this decision. This definition must be changed. She submitted a paragraph from this case to back up her comment.

Ms. Way said the Critical Area Ordinance language states that Type III Streams are those streams that are either frail or intermittent and have salmonids fish. She said this is an inadequate standard and description of a Class II Stream. The standard should not be whether or not fish have been seen, but whether the habitat would support fish. According to the proposed classification, streams where no fish have been seen would be lowered to Class III, which has much lower buffers. Although the Gaston Decision identifies streams such as Thornton Creek as Class II, the proposed ordinance would consider them to be Class III Streams.

Ms. Way said her groups object to the language that states that "The Planning Department may waive the presumption of fish use for stream segments where a qualified professional has determined that there are confirmed long-term water quality parameters making the stream incapable of supporting fish." The term "qualified professional" concerns her, since it is apparent what qualified professionals have wrought on Innis Arden's critical areas. She urged the City to have a higher standard for determining whether or not a stream is capable of supporting fish.

Regarding the issue of daylighting streams, Ms. Way said she believes there is a lack of language discouraging new construction over pipes or culverted streams. There is also a lack of incentives for daylighting the streams. Ms. Way said her groups support the idea of strengthening the tree cutting section so that what has occurred in Innis Arden can no longer occur. She noted that Boeing Creek has already experienced massive destruction, and it is time to stop it. She submitted a letter from the Department of Ecology to the City of Covington. She also submitted the City of Covington's critical areas ordinance as part of the record (Exhibit 13).

Fran Lilleness, 17730 – 14th Avenue Northwest, said she has lived in Richmond Beach for 28 years and in Innis Arden for 18 years. When she lived in Richmond Beach she was totally surrounded by trees. They chose to move to Innis Arden because there are covenants to legally protect the view. They had to pay dearly for this protection. She has seen many times in Richmond Beach where people purchase homes for the view, and then new development or tree growth destroys it. The Commission should remember that the residents in Innis Arden pay dearly for their view protection. Their taxes are very high. She used to be a realtor for the Board of Appeals and Equalization for King County in the

late 1980's, and many people presented pictures of their properties and the views that they had lost. The Board had no other alternative but to agree with the diminished value and lower the property taxes. If Shoreline wants to maintain their tax base, they should look for ways to help the citizens preserve views. She said it is a constitutional right for property owners to enjoy their properties. Many of the people who spoke in favor of retaining the trees in Innis Arden do not have views or they live on a bluff and do not have a problem with views.

Ms. Lilleness recalled that the City filed a lawsuit against Innis Arden because they were taking down trees in the reserve that were hazardous. These trees could have fallen on people. She walks through the reserves, and the closed canopy makes it frightening. It is nice to be able to walk through the reserve and see that there is no one hiding in it. The covenants say that the residents of Innis Arden have a right to use the reserves however they wish. If children are to play in the reserves, they must be visible. She asked that the Commission support the staff's recommended Stewardship Plan for view restoration in critical areas. She submitted pictures showing what has been done to improve view in a park site. She also provided pictures showing what has been done on a ridge in the reserve (Exhibits 14 & 15).

Harry Obedin, 17071 – 12th Northwest, said he is very concerned about the number of people who have testified that do not live in Shoreline. Their opinions are being brought in as carpetbaggers. He said he is just as concerned about the ecology as some of the self-appointed ecologists. However, he is concerned about the issue of urban conflagration. When the season is dry, there is a very good chance that one of the reserves will go up in flames unless they are managed and the brush is controlled. Secondly, Mr. Obedin pointed out that oversized trees provide a very big hazard to surrounding trees as well as to people and property. For instance, if an isolated Douglas Fir Tree or Cedar Tree gets high enough and is not protected by a lot of other trees that share the wind load, it will come down. This is something that the people who love trees are not willing to admit. He said he had a hedge of Douglas Fir trees in another county, and it was pointed out that the trees would inevitably get blown over in a good wind storm. The ordinance should consider these types of trees. He recognizes that large and mature trees cannot be replaced by just one small tree. However, a dead large tree loses its value, and the mitigation plan could require people to put in any number of trees that could collectively have the same effect as a large tree. In turn, they would grow to a respectable size.

Gini Paulsen, Ph.D., 16238 – 12th Northeast, said the public hearing is a good example of the conflict between individual desires to maximize property benefits and the common good. One way to reexamine the issue is from a systems perspective. They live in an environment that is interconnected. What happens in Shoreline has an impact on Lake Washington and Puget Sound. At one time, Shoreline was an unspoiled area with many trees that remain standing despite winds from the east, west, north and south. She urged the Commission to put the environment first, since this would enhance the life of the entire community and all the individuals in it. Trees provide for soil stabilization, capturing rainfall, and other benefits including the protection of the streams that are close by. She said that by enhancing, restoring and preserving the environment, they could protect the salmon bearing streams and the Sound. Everything that is done in Shoreline has an impact on the Sound, which has already declined in quality of sea life. It is already badly polluted, and Shoreline cannot afford to continue to contribute to the pollution. They must do things to enhance the area so that it can again become salmon producing.

Michael Rasch, 18542 Springdale Court Northwest, said he submitted a letter to the Commission that contains his specific comments regarding the proposed changes to the Critical Area Ordinance (Exhibit 5). He referred to Mr. Crawford's comment that he believes he has the only dam on a salmonid stream, but there is one Boeing Creek, also. It is owned by the Seattle Golf Club, and it has blocked fish from getting up to the Hidden Lake area. The Seattle Country Club is not maintaining this dam, so perhaps the dam exclusion was aimed at this situation.

Mr. Rasch said many residents of Innis Arden have commented about views and trees, and he is one of the people who would like to see the views restored. The proposed Critical Area Stewardship Plan would balance the environment and the view value. The estimated value of 538 homes in Innis Arden is about \$330 million, which equates to a lot of property taxes. A lot of this value is based on the fact that people have views. The views are diminishing. No one who is in favor of view restoration wants to see the reserves decimated and turned into wastelands. They want them to be replanted with lower growing species that provide the same benefits as the taller trees do. One of the suggestions he made in his written comments was that the Commission should consider modifying the requirement that the replanting be done with native species. He asked that it be changed to read "native species unless otherwise approved." He said the residents have talked with many arborists about replanting the reserves, and they would like to make them more park like. There are varieties of lower growing trees that could provide habitat, soil stabilization, water uptake, etc. The trees do not have to be native species. They can be beautiful yet provide the same benefit as the native species.

Brian Dodd, 18219 – 13th Avenue Northwest, said he is an Innis Arden Board Member. He read a letter written by Judge Bruce Hilyer, a King County Superior Court Judge and a member of Innis Arden (Exhibit 16). He emphasized that Judge Hilyer's letter presents his personal opinion as a shareholder. Judge Hilyer's letter stated that since his family moved to Innis Arden in 1987, their views have gradually deteriorated to the point that it is significant in terms of their enjoyment and their property values. The letter states that he and five neighbors got together to hire a professional to design a vegetation management plan to replace the taller view-blocking trees in the community reserves with lower, predominantly native species. The Board of Innis Arden conditionally approved the plan, but the City of Shoreline staff informed their consultant that any trimming, removal or replacement in the ravines would require approval through the Hearing Examiner process and it could be appealed to the City Council. But he points out that this process is cumbersome, unpredictable and quite expensive.

Judge Hilyer's letter asked that the Commission give careful consideration to a more predictable process with realistic criteria to allow view protection in areas adjacent to critical area designations. He pointed out that there would always be a vocal minority opposed to any new solutions, but every time the entire community has voted or been surveyed on the issue, a strong majority has always recognized that view preservation is one of the most valuable and unique aspects of the community, and that it is worthy of protection. Judge Hilyer further asked that the Commission not be misled in believing that this is a case of development versus the environment. He said he has been a committed environmentalist throughout his entire adult life, including two terms on the Board of Directors for the Washington Environmental Council, four years on the Board of the Hanford/WSDOT Group, part of Heart of America Northwest, and nine years on the Washington State Parks Commission, including two terms as president. He concluded his letter by stating that the Innis Arden Reserves need to be managed like urban forest parks,

not like old growth forests. He asked that the Commission work with them to design a process that is predictable based on science and best horticultural practices and allows them to protect the views that distinguish the community. The amendments proposed for the Critical Area Ordinance are a good first step in establishing such a process. As difficult as the issues may appear, he suggested that the community is not as split on the issue as some would like the Commission to believe. Moreover, he said the issue would become more difficult to resolve in the future as more and more properties lose their views.

Michele McFadden, P.O. Box 714, Wauna, Washington 98395, said she provides legal counsel for the Crawfords and the Twin Ponds Fish Friends. She said that she reviewed the ordinance in detail to determine the impact it would have to Thornton Creek. She said she has heard many people say they do not want the ordinance to go backwards and be less protective than it currently is. But that is exactly what the proposed ordinance would do because of the proposed changes to the definition of streams and the typing of streams. She suggested that the Commission read through these two proposed changes in more detail in the letter she submitted (Exhibit 17). She suggested that the City's standards would go down if they agree to do away with defining piped streams as "streams" and attempt to change the typing system to no longer recognize streams that could potentially have fish. While it is nice to look at the scale of new buffers that are being proposed, if the City applies Type III buffers instead of Type II buffers to Thornton Creek, the end result would be a reduction in standards. As an example, she referred to a map that was presented to the Commission a few weeks ago, which purports to show where the 35-foot standard buffer areas would be located. She noted that the map shows a 35-foot buffer for Thornton Creek, which is the minimum standard for a Type III Stream, but not for a Type II Stream.

Ms. McFadden said that now that the City has issued their comments regarding the Gaston Decision, she would like to brief the Commission about what really happened and why the "reasonable use" concept is not working in the City. She proposed that the definition of "reasonable use" be thrown out since it is not working. She pointed out that the Gaston Decision speaks to boundary line adjustment problems because the City determined that a lot and a half was two lots. The second lot was never legally created under the subdivision code. She noted that when the project started, the entire parcel was all in buffers. By using a process that did not allow public comment and access, the City ended up creating a new lot. She questioned if the Commissioners find this result to be appropriate. She asked if the Commission wants to continue to allow the City staff to avoid the subdivision process to create a lot that is totally in violation of the buffer standards. She said staff appears to recognize that this is a problem. If this type of adjustment is going to be allowed through the boundary line review, then the boundary line review process must be subject to the Critical Area Ordinance as is every other process that the City is involved in.

Brian Derdowski, 70 East Sunset Way, #254, Issaquah, 98027, said he represents the Thornton Creek Legal Defense Fund and the Public Interest Associates. He said his friend and colleague, Janet Way, spoke on behalf of the Sno-King Environmental Council. Ms. McFadden is his former chief staff member, and she is arguably the most qualified and technically competent expert on critical area regulations in the State of Washington. She is a former hearing examiner. She not only crafted the ordinance on his behalf in 1990, but she was the prime architect behind the 1985 Comprehensive Plan.

He encouraged the Commission to create some mechanism whereby the Commission could avail themselves to the type of talent she has to offer.

Mr. Derdowski said his organizations are beginning a very detailed review of the City's proposed ordinance, and they have some very significant, profound and actionable concerns about it. They are in the process of determining whether to bring their issues before the Planning Commission or before the City Council. He said he is not confident that the Planning Commission has the mechanism whereby they can get into the kind of detail necessary. Neither would they receive the necessary support from the staff. He expressed his belief that the Commission has been coached to believe that protecting critical areas is a goal that must be balanced against all the other goals in the Growth Management Act, and this is a complete misread of what their mandate is. There are certain statutory and mandatory requirements that the City must comply with to protect critical areas, and if that requirement conflicts with the City's desire to provide affordable housing or protect views, the critical area requirements shall prevail. If he were a resident in Innis Arden and concerned about views, he would be very concerned that the City would adopt a regulation that creates a view exemption that is totally inconsistent with law. This would result in bad case law, and the judge would throw out all the minor exemptions that the property owners are currently taking advantage of now. If the proposed ordinance is approved, the Innis Arden residents would likely end up with a worse situation.

Mr. Derdowski pointed out that the Commission must consider some mandatory components during their deliberations. He said the ESA 4D rule, the Clean Water Act, and the NPDES Permit are linked to the Critical Area Ordinance. The ordinance is also linked to the Department of Ecology requirements, Hearings Board decisions, CTED's guidelines, and the Countywide Planning Policies. He recalled that when the City adopted their Comprehensive Plan, they included a statement that the Countywide Planning Policies are a guide. However, he pointed out that the policies are not intended to be a guide. They are mandatory elements that the City must comply with, and the City of Shoreline signed an interlocal agreement saying they would be willing to comply. He said that the proposed ordinance lays out a wetlands classification system that is totally in conflict with the Countywide Planning Policies, which state that cities shall adopt the Department of Ecology's Wetlands Manual or any amended version that comes down the pike. But the City has not done this. If this simple conflict is not being addressed by the proposed ordinance, he questioned how many other things are not being addressed, either.

Mr. Derdowski suggested that the Commission carefully consider whether they want their efforts to "crash and burn" at the City Council level, the Hearings Board, or Superior Court. If the answer is no, they must create a good high-quality working relationship with the various environmental groups that are present and the City staff. These groups would like to augment the staff's work. On behalf of the citizens of Shoreline, he asked that the Commission diversify their input and question what they are being told by the citizens and the staff. They must avail themselves to all of the wealth of knowledge that is available.

Bob Allen, 17225 – 12th Avenue Northwest, pointed out that Boeing Creek is frequently referred to as a big washout. The Boeing Creek washout on 175th Street actually happened two times, and he lived in Innis Arden during both of the events. The last time it occurred, he and his wife drove over it just before

it gave way. While he is very concerned about this situation, it is important to remember that this water didn't come from Innis Arden. It came from East Aurora Avenue and from residents that are located to the east and north. By the time the water coming down into Boeing Creek hit Innis Arden the situation was catastrophic already.

Mr. Allen said he and his wife walk around Innis Arden daily, and his children and grandchildren have roamed the trails. They are very concerned about the environment. He said he is fortunate enough to enjoy a view, and they have worked hard and judiciously to maintain it. They work in the reserves to clean them up and make them safe for people to enjoy. They have done extensive research on the best ways to manage the reserves. He said there are low growing plant species that would maintain the property as a safe and environmental area however they wouldn't grow up tall and take away the views and thus property values. He suggested that there is room for both the view and the environment and habitat.

Mr. Allen said many people have talked about having hard and fast rules that apply to everybody equally. He suggested that no one is smart enough to make an ordinance that applies across the line to everyone forever. He felt the ordinance should allow flexibility. He said he believes there is enough knowledge in Shoreline and enough people who have good commonsense, that when special circumstances arise they will make the right decisions by hearing all parties concerned, by choosing experts they think have the knowledge they need, and then making an unselfish decision. That is why groups such as the Planning Commission have been selected.

Ewa Sledziewski, 17736 – 15th Avenue Northwest, said she supports the City's proposed stewardship plan for restoring view in critical areas. She said she owns a house that has an absolutely gorgeous view, and there is no problem with any trees in front of her. There are a number of residents who do not have a view, but they enjoy the streams and creeks. However, they do not want to allow the residents who enjoy the view to preserve their view. The situation in Innis Arden at this time is really horrible. She appealed to the Commission to be fair to everyone and use commonsense rather than being scared and terrorized by a small group of people who are in favor of tree preservation. Trees are beautiful, but so are views. Ms. Sledziewski asked the Commission to contact the Innis Arden Board of Directors because they represent all of the residents. Another organization exists in Innis Arden, but it does not have the mandate of the whole community.

Pam Schmidt, said she is a member of the Innis Arden neighborhood, too. She said she also supports the City's proposed stewardship plan concept in order to protect views in critical areas. She said she is not an expert, but she understands the facts. She pointed out that Innis Arden was clear cut many years ago when it was developed, and it did not fall into Puget Sound as many people want the Commission to believe would happen if trees are cut down. She said she is also a mother, and she walks through the reserves every day. While people in the audience have been disrespectful and snicker about the safety issue not really being an issue, it is. She reported that right after school let out last year a tree fell down at the head of one of the reserves. There are no sidewalks in Innis Arden, so the children have to walk through the reserves if they want to visit each other because there is not a lot of space on the street. She suggested that the reserves do not all have to look the same, but they should all be safe. She suggested that the issue is not really always about trees. It is more about power. She has been on the Innis Arden

Board, and she has seen the nastiness that has occurred. She pays for her view, and that is why she purchased her home. She values people who enjoy trees, but small trees can also be considered good. She pointed out that the reserves are not public property. They are private property. She challenged the Innis Arden residents who criticize the replanted reserve areas to visit them again. They are quite lovely.

Mr. Stewart reported that the City received petitions signed by 44 individuals that would be entered into the record. The petition reads, "We the undersigned residents of Innis Arden have reviewed the letter and the proposed changes to the Critical Area Ordinance submitted to you by our neighbor, Michael Rasch, and agree with him that the Planning Commission should adopt the new code with the proposed changes." He said copies of the petition would be provided to each of the Commissioners.

COMMISSIONER BROILI MOVED THAT THE PUBLIC HEARING BE CLOSED.
COMMISSIONER HALL SECONDED THE MOTION.

Commissioner Hall recalled that at least one citizen requested more time to provide written comments to the Commission. He asked if it would be possible to hold the record open for written comments, without holding another verbal public hearing. Mr. Stewart said it would be appropriate for the Commission to close the public hearing, but leave the record open for submittal of comments until a date certain.

COMMISSIONER HALL MOVED THAT THE MOTION BE AMENDED TO LEAVE THE
RECORD OPEN FOR ADDITIONAL WRITTEN COMMENTS THROUGH MARCH 31, 2005.
COMMISSIONER BROILI AGREED TO THE AMENDMENT.

Commissioner Sands thanked the citizens who came before the Commission to express their opinions. He particularly thanked those who offered specific proposals for modification to the Critical Area Ordinance. It is the Commission's job to review the ordinance and recommend the appropriate amendments. Suggestions from the public are very helpful to the review process. The remainder of the Commission concurred.

Mr. Stewart advised that the Commission has two options for beginning their deliberations. One would be to call for a special meeting on March 31st, or they could begin their deliberations on April 7th. He noted that there is another item on the April 7th agenda regarding a site-specific rezone application for the Ronald Wastewater District. He suggested that the Commission close the written comment period a few days earlier than March 31st so staff could produce the documents for distribution a week in advance of the Commission's deliberation.

Mr. Derdowski said the action of opening or closing a public hearing is an artificial action. Because the ordinance is a legislative action, the record is open and anyone can send information to the City Council right up until the very end of the process. Most legal observers believe that comments can be offered at any time in the process, so it doesn't matter what the Commission decides to do to accommodate their deliberations. Commissioner Hall said that it is important for him to feel that everyone has been given an adequate opportunity to provide comments before the Commission deliberates and forwards a recommendation to the City Council.

THE COMMISSION AGREED TO AMEND THE MOTION TO PLACE THE DEADLINE FOR ADDITIONAL WRITTEN COMMENTS AT 5:00 P.M. ON MARCH 25TH WITH COMMISSION'S DELIBERATION STARTING ON APRIL 7TH. THE AMENDED MOTION WAS APPROVED UNANIMOUSLY.

The Commission agreed to begin their deliberations on the Critical Area Ordinance on April 7th.

8. REPORTS OF COMMITTEES AND COMMISSIONERS

Commissioner Hall commended the staff for being so responsive at the retreat in providing ideas about how they can help the Commission do their job better and keep their discussions on track.

Chair Harris recalled that at the retreat he was asked to contact the Mayor to request a dinner meeting. He reported that the Mayor has been out of town. He has left two messages, so he expects to hear from him shortly.

Commissioner Phisuthikul reported that he received an invitation to a luncheon meeting of the 2005 North King County Economic Summit. Commissioner McClelland pointed out that one of the sponsors of the event is the group, Forward Shoreline. She said she plans to attend the event.

Commissioner Broili announced that KUOW is going to do a piece about low-impact development on March 23rd in their 9 or 10 a.m. segment.

Commissioner McClelland recalled that at the retreat the Commission discussed the idea of having topical meetings periodically throughout the year. She referenced an article from the March 9th *SEATTLE TIMES* about cities clustering development near centers of transportation, transit-oriented development, etc. She suggested that this could be an issue the Commission could discuss at a topical meeting.

Commissioner Hall advised that two major conferences are coming up at the beginning of April. One is the Puget Sound Research Conference sponsored by the Puget Sound Action Team on April 4th – 8th. The Bi-Annual Conference of the Society for Ecological Restoration is scheduled for April 11th – 15th. As part of this conference, a major event would be held on April 13th at the Town Hall Venue in Seattle. Those who are interested in environmental restoration and protection of Puget Sound should consider attending this event. Both conferences would be held at the Seattle Convention Center.

9. UNFINISHED BUSINESS

Commissioner Kuboi reminded the Commission that there was one item they did not get to at their recent retreat (each Planning Commissioner's expectation of the other Planning Commissioners). He asked that this topic be docketed on the first Planning Commission meeting where time is available. The Commission agreed to add this topic to the list of future agenda items.

10. NEW BUSINESS

There was no new business scheduled on the agenda.

11. ANNOUNCEMENTS

Mr. Stewart announced that the City has issued a building permit and demolition has begun for the five-story, 88-unit apartment complex on 15th Avenue at about 180th Street. The staff is pleased to see this property finally under construction, since it implements the vision and scheme of the North City Sub-Area Plan.

12. AGENDA FOR NEXT MEETING

Mr. Stewart announced that the anticipated March 31st special meeting would not be held because the appellants were unable to make that date. Ms. Spencer reported that the special meeting was rescheduled to April 14th at 7:00 p.m. This would be a quasi-judicial joint hearing with the Hearing Examiner. If necessary this public hearing could be continued to the April 21st regular Commission Meeting. A public hearing for the Ronald Wastewater District rezone is scheduled for April 7th. Mr. Stewart said staff is also anticipating the Commission would have time at their April 7th meeting to begin their debate on the Critical Area Ordinance.

Commissioner Sands inquired if the cottage housing workshop that is scheduled for May 5th is only for the Planning Commissioners. Mr. Stewart answered that this workshop is intended to be a broader-based workshop than just the Planning Commission. Staff is still working out the details, but perhaps an open house would be scheduled from 5:00 to 7:00 p.m., which would allow community discussion. Then the Planning Commission could be invited to participate in the discussion. He reported that a number of citizens are anxious to have an opportunity to discuss the issue before the public hearings are scheduled.

Commissioner Sands said he has noticed relatively small signs throughout the community that have the words "cottage housing" and a number to contact for more information. He said that while he feels it is appropriate for the signs to be placed on private properties, it is not appropriate for them to be attached to public properties such as telephone poles and signs. Mr. Stewart reported that the City Council extended the moratorium on cottage housing applications. He advised that it is possible that the City Council would also be invited to attend the cottage housing workshop.

Mr. Stewart indicated that the City Council would likely extend an invitation for the Commission to attend a meeting with the Innis Arden residents. The Innis Arden residents have asked the City Council to conduct the same kind of meeting that was held with the Sno-King Environmental Council regarding the Comprehensive Plan.

Commissioner McClelland noted that the reserves in Innis Arden are private property. She suggested that the Commissioners visit the reserves. Mr. Stewart advised that the City has been informed by the

Innis Arden Board that they are not to trespass in the reserves without their expressed permission. If the Commission wants to visit the reserves, staff could attempt to arrange a tour. Commissioner Broili felt that because the Commission is being asked to make decisions that will impact the Innis Arden residents, it would be appropriate for the Commission to request a tour of the reserves.

Commissioner McClelland stated that she felt the invitation should come from the Innis Arden Board of Directors, rather than from individual property owners. The Commission should visit the reserves as a group. Commissioner Hall agreed with Commissioner McClelland's suggestion. He said anything the Commission can do to educate themselves more fully on the issues being considered would allow them to serve the community better. However, if they want to schedule this visit soon, there could be a problem with the Commission going as a group because of the public notice requirements. If they were to tour the reserves in smaller groups, they would not have to advertise the tours to the public. He suggested that the tours be arranged outside of a full Commission meeting. Commissioner Sands concurred.

Commissioner Broili said he has toured several of the reserves with private residents. During his visit, questions came up that the property owners could not answer. He suggested that it would be more valuable to take a tour of the reserves with someone who can answer questions regarding the trees and plantings.

Mr. Stewart agreed to contact the Innis Arden Board of Directors, requesting an opportunity for the individual Commissioners to visit the reserve sites. Commissioner Broili suggested that two or three dates be set up to allow a few Commissioners at a time to meet with representatives from the Board. The remainder of the Commission concurred that this would be appropriate. Someone from the audience invited the Commissioners to contact him for a private tour if their request is denied by the Innis Arden Board of Directors.

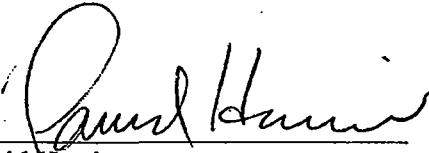
Commissioner Hall said that if the Commission is interested in gathering more information to help them in their deliberations on the Critical Area Ordinance, they should pay attention to the citizen suggestions about managing the Innis Arden reserve areas as urban parks. He noted that there are a wide variety of urban parks the Commission could review, and these would show quite a range of management. He suggested that they look at both Golden Gardens Park and Carkeek Park, which are managed differently. Commissioner McClelland pointed out that these two parks are public property, while the reserves at Innis Arden are privately owned. Commissioner Hall said his intent is for the Commission to review other ways for the reserves in Innis Arden to be managed.

Commissioner Kuboi asked if at least one of the tours of the Innis Arden Reserves could be scheduled on a weekend during the daylight hours. Mr. Stewart said he would attempt to schedule a weekend date, as well.

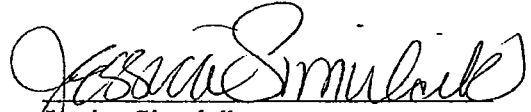
Commissioner Sands reminded the Commission that even if they do visit the reserves, their purpose is not to resolve whatever problems Innis Arden has regarding the trees. The purpose is really to determine what type of language should be included in the Critical Area Ordinance to address these types of issues.

13. ADJOURNMENT

The meeting was adjourned at 9:40 p.m.



David Harris
Chair, Planning Commission



Jessica Simulcik
Clerk, Planning Commission

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION SUMMARY MINUTES OF REGULAR MEETING

April 7, 2005
7:00 P.M.

Shoreline Conference Center
Board Room

PRESENT

Chair Harris
Commissioner Sands
Commissioner McClelland (arrived at 7:30 p.m.)
Commissioner Kuboi
Commissioner Phisuthikul
Commissioner Hall
Commissioner Broili
Commissioner MacCully (arrived at 9:50 p.m.)

STAFF PRESENT

Tim Stewart, Director, Planning & Development Services
Andrea Spencer, Senior Planner, Planning & Development Services
Matt Torpey, Planner II, Planning & Development Services
David Pyle, Planner I, Planning & Development Services
Jeff Ding, Planner I, Planning & Development Services
Jessica Simulcik, Planning Commission Clerk

ABSENT

Vice Chair Piro

1. CALL TO ORDER

The regular meeting was called to order at 7:05 p.m. by Chair Harris, who presided.

2. ROLL CALL

Upon roll call by the Commission Clerk, the following Commissioners were present: Chair Harris, Commissioners Kuboi, Sands, Hall, Phisuthikul and Broili. Vice Chair Piro was excused. Commissioner McClelland arrived at 7:30 p.m. and Commissioner MacCully arrived at 9:50 p.m.

3. APPROVAL OF AGENDA

The agenda was approved as presented.

4. APPROVAL OF MINUTES

The Commission postponed approval of the March 17th minutes until the April 21st meeting.

5. GENERAL PUBLIC COMMENT

Eric Cheney, 17790 – 15th Avenue Northwest, expressed his concern about a proposal on the table that would allow irrigation wells to fight the present day drought, particularly in Innis Arden. He introduced Steven Porter (18034 – 15th Avenue Northwest) and J. Michael Brown (16945 – 14th Avenue Northwest) who were not present but support his remarks. He said all three of them have Ph.D.'s in earth science, and he is a licensed geologist in the State of Washington. Mr. Cheney said it appears the proposal to drill irrigation wells in Innis Arden has proceeded without any geologic or hydrologic studies being done. He suggested, therefore, that the proposal is premature. While most people believe the geology of Shoreline is a porous sponge, it is actually made up of layers, some which transmit water (aquifers) and some which do not. He suggested that a number of important questions must be answered. For example, where in Shoreline would the wells be drilled and how deep? If irrigation wells are put into the main aquifer, would that seriously affect water going into the streams in the area? Would the reduction of water into those streams seriously affect the flora and fauna? Would the reduction of water from the aquifer seriously affect the runoff water and the soil moisture, which many Innis Arden residents now rely upon for their lawns and gardens? Would the periodic withdrawal and subsequent recharge of the water sufficiently affect ground conditions? Would it cause subsidence or slope failure? Would the withdrawal of water from shallow aquifers sufficiently deplete the water table resulting in insufficient surface water for the surrounding neighbors? Mr. Cheney concluded that the questions he voiced should be answered before any proposal for irrigation wells is seriously considered in Innis Arden or anywhere else in Shoreline.

Elaine Phelps, 17238 – 10th Avenue Northwest, noted that when people purchase property and then demand that everyone down slope of them cut the trees and keep the structures low to protect their view, they are actually imposing a financial disadvantage on the people down slope for their own personal gain. She cautioned that before the Commission considers allowing trees to be cut to protect views, they should think about the whole environmental structure, and not just benefits to individual property owners. She concluded that she is not against people obtaining personal benefits, if they do not create a disadvantage for everybody else.

6. STAFF REPORTS

Public Hearing on Rezone File No. 201345 (Ronald Wastewater District, 17505 Linden Avenue North)

Chair Harris reviewed the rules and procedures for the quasi-judicial public hearing then opened the public hearing. He asked if any of the Commissioners had received any ex-parte communications regarding the subject of the hearing. None of the Commissioners indicated an Appearance of Fairness concern. No one in the audience voiced a concern, either.

Jeff Ding, Planner, presented the staff report for Rezone Application 201345. He explained that the subject of the rezone application is four parcels of land located on the corner of North 175th and Linden Avenue North, which are all owned by the Ronald Wastewater District. The proposal is to rezone the

parcels from R-12 and Office to R-24. He reminded the Commission that because this is a quasi-judicial action, the Shoreline Municipal Code requires that they conduct a public hearing and make a formal recommendation to the City Council. The Planning Commission has two options.

- Recommend approval to rezone the subject parcels from R-12 and O to R-24 based on the findings presented in the report and public hearing.
- Recommend denial of the rezone application, in which case the R-12 and O zoning would remain based on specific findings made by the Commission.

Mr. Ding provided an aerial photograph of the area and specifically pointed out the four subject parcels. He noted that the Ronald Wastewater District office is located at the southern most parcel. The two middle parcels are both vacant and consist of a gravel lot that is used for employee parking. The northern most property is currently developed as a single-family rental home that is owned by the District and is being rented out. He provided a photograph of the southern most property, which contains the office building and parking for customers. He noted that the District is currently storing vehicles on the northwest portion of the parcel. He also provided specific photographs to illustrate the current uses of the two vacant parcels in the middle and the parcel to the north.

Mr. Ding reminded the Commission that rezone applications must be evaluated based on the five criteria that are outlined in the Shoreline Municipal Code 20.30.320(B). He reviewed each of the criteria as it relates to the specific proposal:

1. **The rezone is consistent with the Comprehensive Plan.** Mr. Ding explained that the current Comprehensive Plan designation for the four parcels is mixed-use, which has a compatible zoning designations ranging from R-8 through R-48 and several commercial designations. The proposed R-24 designation would be consistent and compatible with the current mixed-use Comprehensive Plan designation. He further explained that in the future the District plans to construct a parking and storage structure on the two vacant parcels, and this type of use would be permitted in an R-24 zone and is consistent with several Comprehensive Plan goals and policies such as: Policy H-6 to encourage infill development on underutilized parcels; Goal U-I to promote City-wide utilities that are consistent, high quality and forward looking; Goal U-III to facilitate provision of appropriate utility services; Policy U-17 to support efforts to ensure adequate infrastructure and utility services; and Goal CF-1 to provide adequate public facilities and anticipate the needs of future growth.
2. **The rezone will not adversely affect the public health, safety or general welfare.** Mr. Ding pointed out that at the time of permit application, the project would be reviewed for compliance with Title 20 of the Shoreline Municipal Code. He specifically reviewed the following applicable sections that would be used in review of a permit application: density and dimensions (setback requirements, building coverage, impervious coverage percentages); tree conservation; parking, access and circulation; landscaping; wastewater, water supply and fire protection; and surface and stormwater management. Mr. Ding advised that a SEPA Determination of non-significance was issued for the proposal on March 3, 2005, and future development proposals might also be subject to SEPA review, as well.

3. **The rezone is warranted in order to achieve consistency with the Comprehensive Plan.** Mr. Ding reviewed the list of consistent zoning districts for the mixed-use designation. He advised that the current zoning designations of R-12 and Office are both consistent with the current mixed-use designation, and the proposed R-24 would be consistent, as well.
4. **The rezone will not be materially detrimental to uses or property in the immediate vicinity of the subject rezone.** Mr. Ding advised that with construction of the parking structure, there could potentially be a conflict with views from some of the neighboring properties. However, there are other issues of concern that must be addressed such as:
 - **Access from arterial streets.** Mr. Ding explained that the site is currently accessed from North 175th Street, as well as Linden Avenue North. With the construction of a parking structure, the access to all four parcels would not change.
 - **Traffic and Circulation.** Mr. Ding advised that peak hour trips for the proposed structure are currently unknown at this time, but the code requires that the applicant complete a traffic study if PM Peak hour trips exceed 20. Traffic or pedestrian mitigation could be required at the time an application is submitted.
 - **Availability of Water and Sewer.** Mr. Ding further explained that both the Ronald Wastewater District and Seattle Public Utilities have indicated adequate capacity for the R-24 zoning designation, with the submittal of water and sewer availability certificates.
 - **Tree Retention.** Mr. Ding said there are currently four significant trees on the site, and the code would require the retention of at least 20 percent of the significant trees for any development application. At the time of building permit submittal, tree retention, protection and replacement requirements would be reviewed.
 - **Stormwater.** Mr. Ding advised that stormwater must be treated and detained as per the 1998 King County Surface Water Design Manual and Surface and Stormwater Management Sections of the Development Code. Stormwater would also be reviewed as a portion of any building permit for construction of the parking structure.
5. **The rezone has merit and value for the community.** Mr. Ding reviewed that in 2002, the Ronald Wastewater District increased its service area by 40 percent, to include almost all of the City of Shoreline. Since that time, they have had a need to consolidate their resources and store extra equipment, and constructing a parking/storage structure would fulfill that need. It would also provide a long-term cost savings to the District and its customers and allow them to provide better service to the citizens of Shoreline. The construction of the storage structure would allow the District to store their vehicles and equipment out of view of the neighboring properties and in a secure facility.

Mr. Ding concluded by stating that staff recommends the R-24 zoning be adopted for the subject parcels based upon the proposal's consistency with the Comprehensive Plan, its compatibility with surrounding neighborhood zoning, the results of the environmental review, its value to the community, and the availability of necessary infrastructure. Again, he advised that the Commission has the option of

recommending approval of the subject parcels as proposed or recommending denial of the rezone application.

Michael Derrick, General Manager, Ronald Wastewater District, advised that the District serves all residents of the City of Shoreline, with the exception of about 20 homes that are still being served by a septic tank system. They have grown over the past several years and have had to purchase more vehicles to serve the growing number of patrons. They no longer have room in their existing facilities to store their vehicles. The goal of the proposed application is to provide space for equipment to be stored inside and be protected from the weather. The proposal would enable them to better protect the public's investment and provide low cost sewer service to the City for many years to come.

Commissioner Hall inquired if the parking structure would be more than one story high. Mr. Derrick said the District still has to do a more detailed site study to identify their needs, but the parking structure would not be of significant height to block the view from neighboring properties.

Commissioner Kuboi asked if the applicant would be required to screen the subject property from adjacent properties. Mr. Ding said the Shoreline Municipal Code's landscape section requires non-residential development to provide Type I Screening along any interior boundaries with multi-family or single-family residential development. Landscaping would be reviewed at the time of building permit submittal, and screening requirements would be part of this consideration.

Commissioner McClelland asked how many of the significant trees would be retained. Mr. Ding said three of the significant trees are located along the far west boundary of the property, and the fourth is along the east boundary of Linden Avenue. Commissioner Hall pointed out that the 20-percent tree retention requirement would mandate that the applicant save one significant tree. Mr. Derrick explained that the one significant tree that is located on Linden Avenue would be retained. There is a large pine tree in the southwest corner of the property that would likely be saved, as well. But there is a Hemlock in the northwest corner that was topped many years ago, and it would probably not be saved.

Wesley Frederick, 816 North 175th Street, Unit 4, said he lives in the complex adjacent from the subject property. He understands that the proposed rezone does not identify what type of building would be constructed, but it would allow for a parking structure on the site. He expressed his concern that the proposed parking structure could affect his view, thus reducing the value of his home. He said the view from the east side of the complex currently looks just above a fence out onto the subject property. The street level of Linden Avenue is just about level with the living units. If a parking structure were constructed to a height of 14 feet above Linden Avenue, his third floor window would even be blocked. He also expressed his concern about the trees that currently exist along the property line. He pointed out that two of the four trees are located on the subject property and two are on the complex property. Removing the two trees on the subject property would eliminate the screen between the complex and the subject property. Again, he expressed his concern that the value of his home would be negatively impacted if the proposed parking structure were constructed.

Bill Santee, 816 North 175th Street, Unit 3, said his living room would face the proposed parking garage. Because he is in a central unit, he only has windows on the east and west sides. The proposed

parking garage would only be 24 feet away from his living room window. He said that over the years they have put up with the diesel generators that run in the parking lot during the summer months. The noise the generators have created is frustrating, and the situation could get even worse if the property were expanded to accommodate more equipment. He said he feels the proposed parking garage would significantly reduce the property value for the six units that would look right out at the back side of the structure. He also expressed his concern about District employees increasing the demand for street parking and creating additional traffic. He concluded by stating that if the proposed rezone were approved, the adjacent property owners would be forced to take legal action to protect their property values.

Joe Jaikin, 816 North 175th Street, Unit 2, said he also lives in the condominium complex located to the east of the subject property, and said these units would look directly towards the garage. He explained that his unit is three-stories high and 19 feet from the property line. He would face the traffic, noise and other activities associated with a garage being located just a few feet from their living room and bedroom.

Mr. Ding referred to a comment letter that was submitted by **Keith Klegman, 816 North 175th Street, Unit 1, Vice President, North Park Lane Condominium Association**, regarding the subject of the public hearing.

Commissioner Kuboi asked how high of a structure could be built on the subject property under the current zoning. Mr. Ding answered that the current zoning of the two vacant parcels is Office (O), which would allow structures of up to 35 feet. The proposed parking structure would be approximately 14 feet. Mr. Derrick explained that the first step for the District was to rezone the property, and the District has not given much thought to the exact type of parking structure that would be developed. He noted that the property drops six to eight feet from Linden Avenue. He explained that once the property is rezoned, the District would conduct a topographical survey of the property. Then they would consider the options of what could be built and what would fit in with the neighborhood. He summarized they plan to work with the surrounding neighborhoods to minimize the impacts.

Commissioner Kuboi inquired if the height of the building would be only what is necessary to accommodate the District's largest piece of equipment. Mr. Derrick said that because of the proposed parking garage, employee parking would have to be provided elsewhere. One idea would be to provide staff parking in the structure during the day when the equipment is out in the field. However, he emphasized that no design plans have been created. He concluded that they intend to build a bay that is large enough to accommodate their largest vehicles. While the door and roof of the structure would have to be a little larger, they do not anticipate a taller building than would typically be necessary.

Commissioner McClelland asked why the applicant chose not to submit a consolidated permit. Mr. Ding explained that Ronald Wastewater District has not done any conceptual plans at this point in time, other than focusing on the rezone application, itself. The parking structure would not be feasible with the current zoning designation. Commissioner McClelland inquired if the Commission would have an opportunity to comment on the design of the parking structure if the rezone application is approved by the City. Mr. Ding said the Commission would not have an opportunity to review and comment on a

proposed design during the building permit stage, but the application would be reviewed by staff based on the code requirements. Conditions could be placed on the design based on information gained from the SEPA review. Commissioner McClelland said it is important for the public to understand that once the Commission makes a recommendation, they would have no further ability to comment if the rezone were approved.

Commissioner Broili questioned if the neighboring property owners would be amenable to the project if the building were aesthetically pleasing and the noise abatement issue were addressed. *(The Commission allowed public comment without coming to the microphone and without identifying themselves).* Someone in the audience said part of their concerns would be addressed, but it would also depend upon the height of the building. Another significant concern to them is the impact the proposed parking garage would have on their property values. The audience member said he spoke with a representative from the Fire Department regarding impacts to their building. The Fire Marshall indicated that the Fire Department has no jurisdiction over the use of the property. But he said it would be very difficult to fight a fire on the east side of the condominium complex. They would only be able to get the trucks to the west side of the complex.

Mr. Stewart pointed out that the design standards would be applied to any development on the subject property and would include building design, building orientation, and scale. There is also a very substantial section in the code about exterior materials. He read Section 20.50.150, which states that building exteriors shall be constructed from quality and durable materials. Any substantial materials such as fiberglass, and material such as mirrored glass, corrugated siding, exposed concrete block and plywood or T-111 siding would not be permitted. There are also requirements for roofline variation techniques to provide variety to the façade of the structure.

COMMISSIONER BROILI MOVED THAT THE PUBLIC PORTION OF THE HEARING BE CLOSED. COMMISSIONER KUBOI SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

COMMISSIONER BROILI MOVED THAT THE COMMISSION RECOMMEND APPROVAL OF THE APPLICATION TO REZONE PARCEL NUMBERS 0726049102, 0726049056, 0726049168 and 0726049166 FROM RESIDENTIAL 12 UNITS PER ACRE (R-12) AND OFFICE (O) TO RESIDENTIAL 24 UNITS PER ACRE (R-24) BASED ON THE DRAFT FINDINGS PRESENTED IN ATTACHMENT V, p. 41 OF THE PACKET. COMMISSIONER KUBOI SECONDED THE MOTION.

Commissioner McClelland said she would vote against the rezone application. As a professional planner by trade, she said she feels it is important to take a stand in favor of residential neighborhoods. This is not the first time the Commission has recommended a change that intensifies a non-residential use in an area that is surrounded by residential uses, and she is opposed to the concept. She noted that, with the exception of the high school, all of the uses surrounding the subject property that are accessed by Linden Avenue are residential. She said she considers this area to be a residential neighborhood. She summarized that she said she does not approve of using a residential zone (R-24) to intensify a

commercial use. Linden Avenue is a residential street. She said there is nothing unique to make the proposed location the only place the District facilities could be located.

Commissioner Hall pointed out that the current Comprehensive Plan designation for the subject property is mixed-use, and the two middle parcels are currently zoned Office. While he is very sensitive to the neighbor's concerns that their view could be blocked, it is also important to remember that the view could be equally blocked if an office building were constructed on the property as the current zoning designation would allow. He reminded the Commission that aesthetics would be addressed as part of the design review of a specific development proposal and is not within the purview of the Commission. He noted that the current zoning designation would allow for the construction of a utility facility, which could have a greater impact. He said he would support the proposal since it will allow a utility, which provides an important service to the City, to efficiently meet its expanded needs on site.

THE MOTION CARRIED 6-1, WITH COMMISSIONER MCCLELLAND VOTING IN OPPOSITION.

7. REPORTS OF COMMITTEES AND COMMISSIONERS

Commissioner Hall thanked the Innis Arden community for inviting the Commission on a tour of their reserves. The tour helped him to learn things he had not known previously. Commissioner Broili agreed.

8. UNFINISHED BUSINESS

Deliberations on Critical Areas Ordinance

Mr. Torpey reviewed that a public hearing on the proposed Critical Areas Ordinance Update was conducted on March 17th, and 29 citizens addressed the Commission. The written comment period was extended to March 25th. Within a week, 71 written comments were received, and staff compiled them into a binder for each of the Commissioner to review. He also advised that a second copy of the matrix (Attachment 1) was prepared. Staff incorporated several recommendations from the two State agencies (Community, Trade and Economic Development and the Department of Ecology) that have provided comments and amendments. As the Commission begins their deliberations, staff is asking them to identify the specific amendments they would like to add to the matrix for further deliberation.

Mr. Stewart added that staff received additional suggestions from Commissioner Hall, and these were provided in the Commission's mail envelopes (light blue handout). Staff believes there is some merit to his proposals, so they encourage the Commission to consider them, as well. He stated that if the Commission wants to add additional items or ask staff to do additional research, they should make their requests as soon as possible. He said the staff is looking at comparable cities and what they have done in terms of view protection in relationship to critical areas, but this work has not been completed yet.

Commissioner Sands asked if the staff found anything in the 600 pages of written public testimony that they would deem appropriate to add to the Critical Area Ordinance. Mr. Stewart said that other than

comments from the State agencies, nothing else jumped out. Most of the comments were lined up in predictable positions. There were a number of people arguing for tree preservation, view restoration, additional regulations for streams, etc. The values of the community were brought out in the written comments, but none of the comments rose to the level of being amendments staff wanted to initiate. However, he emphasized that the Commission also has the ability to initiate any amendment they deem appropriate, including those suggested by the citizens.

Commissioner Broili inquired how the previous Commission comments were incorporated into the draft document. Mr. Torpey said the Commission's comments could be found in the first several pages of the amendment matrix. General comments were addressed by staff to the Commission either in writing or orally at a previous meeting. Where there were no specific proposals for code changes, staff did not add them as amendments on the matrix. Mr. Stewart explained that the comment matrix identifies amendments that have been proposed previously by both the staff and the Commission. New additions to the matrix include specific recommendations from State agencies involved in the draft critical areas ordinance review. The April 7, 2005 version of the matrix and the January 10th draft of the Critical Area Ordinance (presented to the Commission in the January 20th meeting packet) are the documents the Commission should work with.

Commissioner Broili referred to Item A on the first Page of Chapter 20.20. He noted that the proposed amendment would change "flood plain" to "flood hazard areas." He explained that "flood plain" is an ecosystem issue, and "flood hazard" is people oriented. Mr. Torpey said the language change was intended to make the City's Critical Areas Ordinance consistent with the Growth Management Act. Mr. Stewart advised that these areas are not only ecosystems and descriptions of areas that are inundated, they are also legal boundaries for the flood insurance rate map. According to the definitions typical of the Federal Flood Insurance Program, Flood hazard areas are "those areas that are subject to inundation by the base flood, including but not limited to streams, lakes, wetlands and closed depressions." A flood plain is "the total area subject to inundation by the base flood." A flood way is "the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot." The proposed ordinance is intended to reflect the Growth Management Act language, which calls them "flood hazard areas."

Commissioner McClelland inquired if "flood hazard areas" are supposed to be included in the list of hazardous areas. Mr. Stewart answered affirmatively. Commissioner McClelland inquired if the correct term for Item D on the same page should be "critical aquifer recharge areas" rather than just "aquifer recharge areas" in general. Mr. Stewart said the Growth Management Act lists geologic hazards, flood hazards, aquifer recharge areas, wetlands, and fish and wildlife habitat conservation areas. The City of Shoreline has chosen to also add streams, giving them a total of six items on the list.

Commissioner Sands asked when the Commission would have an opportunity to discuss the issues raised by the citizens. Commissioner Broili said he reviewed the citizen comments and flagged them in the document. He said he plans to raise his concerns and questions when each particular section is discussed. Commissioner Hall said he, too, read through the written public comments, and he plans to introduce to the Commission during their review. He suggested, and the Commission agreed, that they

should review the draft ordinance page-by-page and identify the concerns they flagged while reading the public comments.

Commissioner Broili referred to Section 20.20.024.H, which deals with the removal of hazardous trees that present a potential danger to structures in the area. He said he does not see any provisions in this section to indicate that the threat must be imminent. Commissioner Hall agreed. He referred to the language at the bottom of the page, which states that removal of hazardous trees shall occur consistent with the tree conservation permitting and site restoration requirements of the Shoreline Municipal Code Sections 20.50.290 through 20.50.370." He noted that amendments have been proposed to Section 20.50.310 (Exemptions from Permit). The original ordinance says any hazardous tree or vegetation which is an immediate threat to public health, safety, welfare or property may be removed without first obtaining a permit. While staff has recommended that this language be deleted, he would recommend it be retained. Commissioner Broili said he would like to go further to make it clear that the threat must be immediate. Commissioner Hall agreed that the words "immediate" or "imminent" should be added to Section 20.20.024.H so that issues could be resolved before trees are removed whenever possible.

Commissioner Sands said that, in general, he would not support the concept of government telling people what they can do with their private property. He said he understands that critical areas must be protected, but no matter how specific the language is, some people will still do whatever they can to avoid following the ordinance requirements. However, he is opposed to making it too difficult for owners to do things on their property by having to second-guess what the City requirements might be. This could expose private property owners to possible liability. There are already plenty of rules related to tree retention, and he would not be in favor of making them more stringent. He is, however, in favor of appropriate enforcement of the existing rules, which appear to work well.

Commissioner McClelland said it is important for the Commission to clarify the issue of hazardous trees. The ordinance presumes that property owners have the knowledge to determine which trees are hazardous. However, often it is not possible to identify all hazardous trees just by looking at them; this determination requires research. If the Commissioners are not all completely comfortable with the presumption of this definition, they should not accept it as written. Chair Harris asked if the City should require a person to live under a tree they perceive dangerous even though it is a perfectly sound tree. While the tree might not technically be considered dangerous, the tree may cause fear in a property owner.

Commissioner Hall reminded the Commission that they are not attempting to completely rewrite the Clearing and Grading Ordinance, which gives the Planning Director the authority to require a certified arborist to make that decision. The Commission is currently deliberating the Critical Area Regulations, so their focus should be on hazardous trees that are in critical areas. Most of the trees in the City of Shoreline are not in critical areas, and property owners can remove six of them in a three-year period regardless of the reason. The point of the ordinance is to balance the protection of the critical areas with the community values.

Mr. Stewart further explained that the hazardous tree exemption applies anywhere in the City, including critical areas. The current six-tree exemption applies only in non-critical areas. Part of the dilemma is

that professional arborists use a form created by the Arborists Society. This form has three factors: structure of the tree, health of the tree, and the target (where the tree would fall and the potential risk). The proposed language would narrow the target to structures, public assembly, etc. Some people have argued that any place is a target because there could be someone in that location at any time.

Commissioner Hall suggested that adding a definition for "hazardous trees" would be appropriate. Commissioner Sands said he believes the proposed language would be appropriate without making it any more restrictive. Commissioner Hall suggested that the Commission make a decision about whether the words "immediate" or "imminent" should be added to the definition. Commissioner Broili agreed but suggested that the appropriate place for the change would be in the clearing and grading ordinance (Section 20.50.310). The majority of the Commission concurred.

Commissioner Hall referred to Section 20.20.046.S, which is the definition for a stream. After reviewing the Gaston Decision a number of times, as well as comparable provisions in other cities, he said he finds the City may have a hard time defending a definition that says "a stream ceases to be a stream at the point it enters a pipe and then becomes a stream again when it comes out." He suggested the Commission consider not adding the word "open" to the definition of streams as recommended by staff. In addition, he said he would propose other associated amendments. While he believes a stream is still a stream when it is in a pipe, he does not believe that it needs the full width of buffer that would otherwise be required. For example, he said one of the functions a buffer provides is to shade the stream. If the stream were in a culvert, the shade function would not be important. The same would be true with leaves and litter fall. He said there is not much that could be done with the land above a culvert that would affect its value and function. However, several citizens have commented that this would foreclose the future option to restore the stream for day lighting.

Commissioner Hall suggested that these watercourses could be identified as "piped stream segments." The ordinance could explicitly define a level of protection for it that is lower than what would be required for a Type II Stream. He recommended the buffer be 10 feet, which is the same buffer width that would be required for a day lighted stream.

Commissioner Broili said he is also concerned about the language in this section, and he was going to suggest leaving the word "open" out of the definition. If a stream is a Type II Stream at one end and a Type II at the other, it should be considered a Type II Stream. Regarding Commissioner Hall's recommendation that the buffer be reduced to ten feet, Commissioner Broili recalled Mr. Lombard's suggestion that the City consider more flexible approaches to buffering. Rather than set a firm number, he would like to leave this option open. Commissioner Broili disagreed with Commissioner Hall's statement that development above a piped stream would have very little impact to the stream base. While the stream is piped at that point, the runoff would be impacted and would eventually end up in the stream. He said it is important to remember that piped streams create impacts to the stream base.

Chair Harris asked staff to clarify if and when the City would allow someone to build a structure over a piped watercourse. Mr. Stewart said the typical cases involve piped watercourses that are not recorded and do not have any public easements. When piped watercourses are found, the City requires an easement dedication since they are part of the public water system. He concluded that the probability of

the City allowing development to occur on top of a known piped watercourses that has stream characteristics would be small. Chair Harris pointed out that since the City would not allow structures to be built over known piped watercourses, there would be no need to provide additional regulations.

Mr. Stewart said that the proposed ordinance identifies a 20-foot buffer for piped-watercourses to accommodate the future possibility of day lighting the stream. He noted that this would not be a lot greater than what the City might request for a drainage easement. If the City knows a piped watercourse is present and they get the appropriate drainage easement, then the buffer would be 20 feet anyway. This would reserve the buffer area necessary for potential future day lighting. He said Commissioner Hall's recommendation is a creative way to address a bitter community conflict, and staff would support the notion of declaring it a stream and then regulating it as Commissioner Hall proposed. Chair Harris agreed but questioned the need for further detail regarding construction over the watercourse. Commissioner Hall said the additional language would make it clear to the concerned citizens that piped watercourses would be treated as critical areas. If a loophole would allow construction over the piped watercourse, his proposed language would address the issue.

Commissioner McClelland asked Mr. Stewart if the City would ever allow parking lots to be built over piped watercourses. Mr. Stewart said the City would find themselves in a difficult situation if someone owned property that had an existing structure on top of a piped watercourse. If the property owner wanted to expand the structure, there is currently no development regulation that would prohibit the expansion. Adopting the regulation proposed by Commissioner Hall would close this option. It would also address the community's significant fear. As proposed by Commissioner Hall, any development on top of piped watercourses and within the 20-foot buffer would be prohibited. Commissioner Hall added that any existing buildings situated on top of piped watercourses would become non-conforming uses.

Commissioner Sands expressed his concern that there may be numerous situations in the City where structures have been built over piped watercourses. He questioned if it would be appropriate to turn all of these properties into non-conforming uses. Mr. Stewart said the current stream and wetland inventory identifies 73,889.49 linear feet of piped watercourses. If all of these piped watercourses were buffered with 10 feet on each side, it would utilize 1.49 million square feet of land.

Commissioner McClelland asked if any of the City's surface water runoff pipes and stream pipes intercept. Mr. Stewart answered affirmatively. Commissioner McClelland said this could result in situations where streams might be Type II going into a pipe, but not when they come out the other end if they intercept with a surface water runoff pipe. According to the current code, anytime a surface water runoff pipe is used by salmonids, it would be considered a stream. Mr. Stewart agreed, but he pointed out that the definition for "salmonid use" has also been an area of dispute.

COMMISSIONER BROILI MOVED THAT THE COMMISSION ACCEPT THE AMENDED LANGUAGE INTO THE AMENDMENT MATRIX AS PROPOSED BY COMMISSIONER HALL TO SECTION 20.20.046.S. HOWEVER, HE WOULD LIKE TO AMEND THE BUFFER REQUIREMENT TO ALLOW MORE FLEXIBILITY.

COMMISSIONER SANDS SECONDED THE MOTION.

Commissioner Broili pointed out that upland uses affect streams and critical areas. However, the Commission has currently only discussed areas that are adjacent to critical areas. Property owners must also take responsibility for the upland issues. When he, Commissioner Hall and Commissioner Phisuthikul visited Innis Arden during a rainstorm, they found water running off the uphill properties and into the stream, carrying sediment loads and pollution to the lower portions of the stream. These issues must also be addressed, and allowing a more flexible buffer requirement would help the City address the upland situations on a site-specific basis.

Commissioner McClelland suggested that Section 20.20.046.S be changed by replacing the phrase "naturally occurring prior to construction" with "that occurred naturally prior to construction of the device." She asked the staff to work on the sentence structure of this section.

Mr. Stewart said there is a lot of science available that indicates the buffers should be flexible. But the City's Critical Area Ordinance has been constructed around the "hard and fast rule" with deviations between the minimum and maximum buffers required. When dealing with piped watercourses, staff assumes that a legal easement would be the minimum buffer needed over the pipe. He said he spoke with the City Attorney about the possibility of the City getting into a "taking" situation by implementing a flexible buffer concept. Their conclusion was that this would not be a problem because an easement would already be required for construction over a drainage way. A 20-foot easement requirement would retain the possibility of day lighting the piped watercourse at some point in the future.

Mr. Stewart said that at one point in time, there was a proposal to day light the pipe from Ronald Bog. However, once the property owners recognized that they would be facing a 100-foot buffer requirement if the stream were opened up, they became concerned about losing their property rights. If the City could clearly establish a 20-foot buffer along the piped corridors, they would be able to remove the apprehension about the negative impacts of day lighting.

Commissioner McClelland suggested that the word "their" be added before the word "construction." Mr. Stewart explained that staff's interpretation is that the word "they" refers to irrigation ditches, canals, storm, and surface water devices. Commissioner Hall said he would not accept this change as an amendment to his language.

THE MOTION CARRIED UNANIMOUSLY.

Mr. Stewart reviewed the Commission's upcoming schedule. He said staff would like the Commission to first complete their review of the Comprehensive Plan amendments. If they don't get this document approved in a timely manner, the City would lose their eligibility for IAC park funding on June 1, 2005. The Commission should focus on getting the Comprehensive Plan to the City Council as soon as possible. Then they could focus their attention on the Critical Area Ordinance Update. Next, they could work on the Cottage Housing Ordinance and Code enforcement issues. Mr. Stewart advised that while the deadline for completing the Critical Area Ordinance is May 19, there are a number of other communities that are also struggling to get their work done.

Mr. Stewart advised that the Commission could propose additional amendments in writing before the May 19th meeting. Mr. Torpey said the additional amendments would be added to compare the existing code and the proposed changes. He advised that as Commissioner amendments are submitted, he would add them to the matrix on the web site the very next day. This would enable the Commissioners to view the amendments that are submitted prior to their next discussion.

Mr. Stewart suggested that the Commission review the draft ordinance page-by-page, flagging their major issues. The Commission could then discuss the major issues that were raised. Commissioner Kuboi asked if it would be helpful to the staff if the Commission were to actually craft the amendment language. Or would it be appropriate for the Commissioners to explain their concerns and allow the staff to draft the appropriate language. Mr. Stewart said staff could draft code language to address the concerns, but it would be more beneficial if the Commissioners were to propose draft language. Commissioner Kuboi pointed out that the Commission appears to spend a lot of their meeting time crafting language. Perhaps this is not the best use of the Commission's time. The Commission should focus on the intent and philosophy of the ordinance, and then allow the staff to craft appropriate language. Mr. Stewart said that for particular issues that have a wide variety of values, the Commission could use the technique of having the staff prepare a "positive/negative analysis" on behalf of the Commission. This analysis could be presented to the City Council to clearly describe the various perspectives of each Commissioner.

9. NEW BUSINESS

Election of Chair and Vice Chair

Ms. Simulcik explained that the Commission's Bylaws state that once a year, the Commission must hold an election for the chair and vice chair positions at the first regular meeting in April. She described the rules and procedures for the election process. She explained that she would conduct the chair election process. Once a new chair has been elected, the Chair would assume the duty of conducting the vice chair election.

Ms. Simulcik called for nominations for the position of Commission Chair. Commissioner Phisuthikul nominated Commissioner Harris as chair of the Commission. As there were no further nominations, Ms. Simulcik declared the nominations closed and called for the vote. Commissioners Broili, Hall, Kuboi, McClelland, Phisuthikul and Sands all voted in favor of Commissioner Harris as Chair of the Commission.

Chair Harris called for nominations for the position of Commission Vice Chair. Commissioner Sands nominated Commissioner Piro as vice chair of the Commission. As there were no further nominations, Chair Harris declared the nominations closed and called for the vote. Chair Harris and Commissioners Broili, Hall, Kuboi, McClelland, Phisuthikul and Sands all voted in favor of Commissioner Piro as Vice Chair of the Commission.

Amendment to Bylaws

Chair Harris advised that at their retreat, the Commission discussed the possibility of amending the Commission Bylaws by inserting a "Director's Report," updating the signature lines, and correcting the spelling error.

COMMISSIONER SANDS MOVED THAT THE COMMISSION AMEND THE BYLAWS BY INSERTING "DIRECTOR'S REPORT" AS ITEM NUMBER FOUR ON THE REGULAR MEETING AGENDA AND PUBLIC HEARING AGENDAS AND TO UPDATE DATES, SIGNATURES LINES AND THE SPELLING OF THE WORD "BYLAWS." COMMISSIONER MCCLELLAND SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

10. ANNOUNCEMENTS

Mr. Stewart referred to a handout staff provided in the Commissioners' packets regarding cottage housing. This handout identifies staff's early guess at what amendments might be proposed to address the problem issues. Staff intends to use the handout at a community workshop, and the Commission would then conduct a public hearing on the issue. He noted that the cottage housing moratorium expires at the end of August, so the City Council is anxious for the review process to move forward.

Mr. Stewart referred to the development that was the impetus for the City's review of the Cottage Housing Ordinance. He reported that the City has issued a decision of approval, with an associated MDNS Determination, for the single-family development on the site. The appeal period for this decision ends on April 8th.

Mr. Stewart reported that the Hearing Examiner has issued a pre-hearing memorandum regarding her decision on a number of the motions on the SEPA appeal for the Echo Lake Application. She dismissed a number of the appeal points, and only one or two are still outstanding. A public hearing on the proposed Echo Lake Comprehensive Plan amendment is scheduled for April 14th, and the rezone and SEPA appeal hearing would be heard in May.

Commissioner Hall asked if the Commission is required to make a decision on the Comprehensive Plan amendment prior to the SEPA appeal and contract rezone public hearing, or could the Commission hold a public hearing on the Comprehensive Plan amendment and postpone their deliberations until after the SEPA appeal and contract rezone public hearings have been completed, as well. He pointed out that, in this case, the Commission understands that there is a very specific contract rezone application connected to the proposed Comprehensive Plan amendment. He would like to hear all of the information prior to making a decision on any portion of the application.

Mr. Stewart expressed his initial concern that this would hold up the Comprehensive Plan amendments contingent upon the change of zone. Secondly, he expressed concern that the proposal to change the area to mixed-use would not require any rezone because the current zoning is consistent with the mixed-use designation. Staff's primary issue is trying to get the annual Comprehensive Plan review to the City Council in a timely manner, and it might be difficult to get deliberations on the SEPA appeal and contract rezone application completed and on the City Council's agenda in time. He reminded the Commission that splitting the contract rezone application from the Comprehensive Plan amendment was

agreed to by all parties during the pre-hearing workshop. He said he would discuss this with the City Attorney for further direction.

Commissioner McClelland recalled that at the Commission pre-hearing workshop, the staff presented pictures of what development of the site might look like. She asked if the Commission would ever have an opportunity to review a proposal for the use of the site that would not include the significant amount of public space. Mr. Stewart said the issue is related to the applicant's right to use the property as opposed to a type of space. The design could work equally well whether the open space is private or public. While there would be a huge benefit to the public if the open space were public, it is important to remember that the property is privately owned. The City must use their zoning power to gain public benefit without crossing the line. From the staff's point of view, they intend to focus on the design of the property and how the buildings and land uses relate to each other as opposed to the ownership rights. Mr. Stewart said there would also be an issue related to right-of-way and public access in and around the subject property. And the Commission should be concerned about this issue as they enter into their deliberations.

Commissioner Kuboi requested a report on the recent Code Enforcement Workshop that was recently held. Mr. Stewart reported that Chair Harris and Deputy Mayor Jepsen participated in a Code Enforcement Workshop on April 6th, which was attended by about 60 people. A number of issues that were presented to the City Council were identified and discussed. As projected, people spoke to both sides, some wanting more regulations and some wanting less. They conducted an exercise where people identified what they thought were the most important changes that could be made. Staff is working on sets of amendments to the Development Code, and these would be presented to the Commission in the future. The blighting influences on the neighborhoods and parking within the right-of-way and on private property were two of the issues raised the most. Chair Harris added that the issue of trash and debris was also raised a number of times, but the comments seemed to be focused on a few derelict properties. Mr. Stewart said the City has a few tough cases that are difficult to prosecute, but they are trying to come up with a method of handling these particularly difficult situations.

Commissioner McClelland requested further information regarding the volunteer breakfast that is scheduled for April 22nd at 7:30 a.m. in the Shoreline Room. Mr. Stewart said this is a free breakfast sponsored by the City to honor Shoreline's volunteers. All of the Commissioners have been invited to attend.

Commissioner Hall asked if the Planning Commission has the authority to amend a docketed request for a Comprehensive Plan amendment. Mr. Stewart answered affirmatively. Commissioner Hall referred to Page 15 of next week's Commission Packet, which shows an amendment to the current Comprehensive Plan land use designation. It shows mixed-use along Aurora, with a large area of high density residential and a narrow strip of public open space connecting Aurora Avenue to the south end of Echo Lake and to the Interurban Trail. While the Comprehensive Plan's description of public open space is not necessarily what one might expect, he asked if it would be possible for the Commission to accept the portion of the docket that recommends changing the high-density residential area to mixed-use, but not change the public open space to mixed-use. Mr. Stewart answered that the Commission does have the authority to do this, but the City Attorney might have some concerns about this type of action. He explained that this

is a situation where the City has a designation of public open space on private property, and the Comprehensive Plan designation states that the underlying zoning would remain. While the Comprehensive Plan designation would not take away any development rights, the property could be open for future acquisition by the City. Again, he cautioned that the City must be careful that they not use their regulatory power to take private property. He said staff's recommendation is that the property be designated as private open space.

Chair Harris said he spoke with Mayor Hansen regarding the Commission's request to meet with the City Council at a dinner meeting. He indicated that the City Council had actually considered the need to meet with the Commission. He suggested that the joint meeting be held as soon as possible. Mr. Stewart advised that staff would work to schedule the dinner meeting.

Mr. Stewart reported that the City Council has scheduled a meeting with the Innis Arden group on April 19th. The Commissioners are invited to attend, as well. He said staff would notice the meeting as a Planning Commission meeting, just in case a quorum of Commissioners are in attendance.

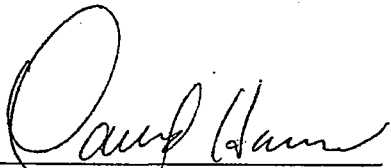
Commissioner Phisuthikul requested more detail about the Point Wells property that was recently sold. Mr. Stewart referred to the letter that was provided to each Commissioner regarding the sale of Point Wells. The letter provides all the information staff has on the matter to date.

11. AGENDA FOR NEXT MEETING

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

12. ADJOURNMENT

The meeting was adjourned at 9:55 p.m.



David Harris
Chair, Planning Commission



Jessica Simulcik
Clerk, Planning Commission

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION SUMMARY MINUTES OF REGULAR MEETING

July 21, 2005
7:00 P.M.

Shoreline Conference Center
Board Room

PRESENT

Chair Harris
Vice Chair Piro
Commissioner Kuboi
Commissioner Hall
Commissioner McClelland
Commissioner Broili

STAFF PRESENT

Tim Stewart, Director, Planning & Development Services
Andrea Spencer, Senior Planner, Planning & Development Services
Matt Torpey, Planner II, Planning & Development Services

ABSENT

Commissioner MacCully
Commissioner Phisuthikul
Commissioner Sands

1. CALL TO ORDER

The regular meeting was called to order at 7:05 p.m. by Chair Harris, who presided.

2. ROLL CALL

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

3. APPROVAL OF AGENDA

Chair Harris asked that Item 9—Public Comment, be combined with Item 6—General Comment, since the Commission already conducted a public hearing on the Critical Areas Ordinance Update. He invited the public to make comments on any issue as part of the general public comment period. The agenda was approved as amended.

4. DIRECTOR'S REPORT

Mr. Stewart reported that on July 18th the City Council unanimously adopted the Planning Commission's recommendation to extend the moratorium until February. However, at the end of their debate, Councilmember Fimia presented the Council with a proposed process (see pink handout) of how to move the issue forward. At the conclusion of the Council's debate, two Council Members requested that the process question be placed on their August 22nd agenda for further discussion. He reminded the Commission that they would be discussing the Cottage Housing Ordinance after they complete their review of the Critical Areas Ordinance. He noted that many of the steps outlined on the pink document have already been completed. However, the big issue would be whether or not a citizen advisory task force would be established, and would likely be the main topic of the City Council's discussion.

Commissioner Kuboi asked if it would be appropriate for Commissioners to offer comments regarding the outlined process that was put forth by Council Member Fimia. Mr. Stewart said that the Commission could comment on the document, but they have no obligation to do so at this point.

Commissioner McClelland referred to the outlined process and questioned why the City would be interested in obtaining appraisals for all of the existing cottage housing units. Mr. Stewart recalled that members of the public raised the issue that cottage housing had a detrimental impact on property values. One way to answer this concern would be for the City to spend a significant amount of money doing appraisal for properties around the cottage housing developments.

5. APPROVAL OF MINUTES

There were no minutes available for approval.

6. GENERAL PUBLIC COMMENT

Elaine Phelps, Vice President of the Association for the Responsible Management of Innis Arden, said she has been authorized by the Association to represent them regarding environmental issues. She advised that at the April 11th City Council Meeting, she referred to the Planning Commission's meeting of April 7th, at which Tim Stewart and Matt Torpey advised the Commission that they found nothing in any of the more than 600 pages of public comment that would cause them to change any of their recommendations. She said it is her hope that the Commission would take a different view of the public input that was provided, and pay attention to the hard work the citizens put into making positive and creative suggestions for improvement.

Next, Ms. Phelps referred to the Planning Commission Minutes of April 14th. At this meeting it was stated that there were some technical findings in the provisions contained in the Innis Arden Vegetation Management Plan that prohibited it from ever being used or implemented. Ms. Phelps said she was very much involved in the creation of the Management Plan, and their intent was to reach a compromise amongst the community. The plan was never implemented because the people who could have done so chose to follow a different route.

Ms. Phelps said she is also very concerned about the proposal that was recommended by staff to allow cutting in critical areas for the purpose of views even if the critical areas are not on the property of the person who wants the cutting done. For example, she referred to the reserves in Innis Arden, which must be preserved and no development is allowed to occur on them. The committee in charge allows individual shareholders of Innis Arden to cut in the reserves to preserve views. She suggested that the provision to allow cutting in critical areas is much too general and vague. The stewardship plan that is envisioned to be part of the ordinance is inadequate. She said that if the City is going to create a vegetation stewardship plan, there must be greater detail as to what goes into it, who is responsible for keeping track of it, and who is allowed to rescind, change or alter it.

Commissioner McClelland inquired regarding the relationship between the Association for the Responsible Management of Innis Arden and the Innis Arden Board. Ms. Phelps said members of both groups are shareholders who live in Innis Arden. The Association disagrees with a lot of the Board's decisions, so they decided to form their own group.

7. REPORTS OF COMMITTEES AND COMMISSIONERS

Commissioner Hall reported that he attended the City's 10-year celebration event on July 14th. The turnout was not quite as strong as some people would have liked, but it was great to see the more than 130 citizens who came out to participate. He reported that the event was well done. He advised that at the event, his wife questioned if the City staff had a plan for recycling the bottled water containers. He commended the staff for responding on the spot and quickly taking responsibility for collecting the containers. He commented that this high-caliber of staff is all part of what creates the wonderful sense of community that exists in Shoreline. Chair Harris reported that he attended the event, as well.

Chair Harris reported that he attended the July 18th City Council Meeting, at which they adopted the Cottage Housing Moratorium as recommended by the Commission. He said he came away feeling like the Commission and staff were being chastised for not getting through the process in a timely manner.

8. STAFF REPORTS

a. Critical Areas Ordinance Update Deliberations

Mr. Torpey referred to the large set of information the Commissioners received prior to the meeting regarding the Critical Areas Ordinance Update. The documents were compiled to represent all of the information the staff has collected on the issue to date, and no new information was provided. He referred to Attachments V and VI of the Staff Report. He advised that Attachment V is titled "Critical Areas Review," and outlines the staff's responses to questions posed by the Commissioners. Attachment VI is titled, "Proposed Changes to the Draft Critical Areas Ordinance," and outlines the proposed amendments that have been proposed to date by staff, state agencies, and Commissioners. He reminded the Commission of the State Community Trade and Economic Development Department's December 1st deadline for having the update approved by the City Council.

Mr. Torpey reminded the Commission that at their last deliberation of the proposed amendments, they started with a page-by-page review of the Critical Areas Ordinance. However, they were only able to get through 4½ pages in about 1½ hours. He suggested that a better approach would be for the Commission to focus their deliberations on the proposed amendments. Commissioners could also bring up additional amendments as they see fit during deliberations, or they could be provided to staff to be placed in the matrix for deliberation at the next meeting.

Mr. Torpey said Commissioner Hall requested that staff inform the Commission that there was a case before the Central Puget Sound Growth Management Hearings Board between Pierce County and several citizen groups regarding their critical areas ordinance. The Hearings Board ruled that Pierce County had failed to provide best available science when they conducted their review on how to protect marine waterways. He said he could provide each of the Commissioners with a copy of the Hearings Board ruling upon request. He referred to the proposal put forth by Commissioner Hall (Item 5 on Page 177 of the Staff Report), which designates streams, wetlands and the Puget Sound as fish and wildlife habitat conservation areas. He noted that this is something that Pierce County did not do, and staff feels this would provide additional protection that is solid under best available science.

Mr. Stewart pointed out that the City Attorney has yet to review the Hearings Board ruling on Pierce County's critical areas ordinance. Staff would consult with him and solicit any additional information he is aware of. He advised that staff could also forward Commission questions to the City Attorney.

Commissioner Hall recalled that at the end of their last deliberation of the Critical Areas Ordinance, the Commission had a main motion on the table, and they had already acted on at least one amendment that he proposed. Mr. Torpey explained that Attachment V represents the draft critical area ordinance that was released in December of 2004. Attachment VI identifies the original draft critical areas ordinance amendments in the left hand column and the later recommended changes by the staff and Commission in the right hand column.

Because no minutes were available from the April 7th meeting, the Commission had difficulty identifying where they left off in their deliberations. Therefore, they discussed options for how they would proceed. Vice Chair Piro asked if the main motion currently on the table would have an impact on both Attachment V and Attachment VI. Mr. Torpey answered that Attachment V simply outlines the staff's response to questions that were raised by the Commissioners. Commissioner Hall noted that Attachment V predates Attachment VI by a few months. Therefore, he said he would prefer not to go back through Attachment V. Instead, he would prefer to review and act on the amendments that have already been identified in Attachment VI. If there is time, the Commission could bring up additional amendments. He suggested that the Commission conduct their review on an amendment-by-amendment basis rather than a line-by-line review of the entire ordinance. The Commission agreed that they would work with Attachment VI (starting on Page 175 of the Staff Report), and that Commissioner Hall would add his additional amendments that were discussed the last time the Commission deliberated the Critical Areas Ordinance Update.

COMMISSIONER HALL MOVED THAT THE COMMISSION RECOMMEND ADOPTION OF THE CRITICAL AREAS ORDINANCE AS AMENDED BY THE STAFF AND SUBJECT TO FURTHER DELIBERATIONS AND AMENDMENTS. VICE CHAIR PIRO SECONDED THE MOTION.

Amendment 1 (Section 20.20.046.S – Definitions)

COMMISSIONER HALL MOVED THAT THE COMMISSION AMEND THE DEFINITION IN SECTION 20.20.046.S FOR “STREAMS” AS SHOWN ON THE HANDOUT TITLED, “PIPED-STREAM SEGMENT AMENDMENTS INTRODUCED APRIL 7, 2005 BY COMMISSIONER HALL.” VICE CHAIR PIRO SECONDED THE MOTION.

Commissioner Hall explained that the staff's proposal inserted the word “open” between “artificial” and “watercourse.” By definition, this would eliminate any piped watercourse from being a stream. He recalled the testimony that was provided regarding an appellate court case on this particular issue. The court indicated that they found it obvious that Thornton Creek would not cease to be a stream simply because it flows into a culvert. In addition, numerous citizens expressed concern about treating something that is in a pipe as not being a stream. He said he was persuaded by their arguments and by the court case and feels it is very important for the Commission to recognize that just because a waterway flows from an open channel into a culvert, does not mean it ceases to be a stream. He said his proposed amendment would not include the word “open.”

Commissioner Hall said he plans to introduce additional amendments later in the Commission's deliberations, including a definition for a piped stream segment and a level of protection for piped stream segments that is consistent with the protection the City would require if someone were restoring or daylighting a stream segment. Regardless of the stream classification, it is unnecessary to protect functions and values such as shade, microclimate, litter and insect fall, etc. when a stream segment is underground in a culvert. Placing a minimum 10-foot buffer on each side of the stream would prevent any development on top of the piped-watercourse that would foreclose a future opportunity to restore the stream.

Vice Chair Piro asked if there has been any precedent for using the word “open” in any of the City's neighboring jurisdiction or in King County. If the terminology of just using “surface water” seems to be the most common use and something they inherited from King County, he sees no problem continuing the terminology without adding any qualifying language.

Commissioner McClelland said another option would be to define a stream as simply an area where surface waters produce a defined channel or bed. She suggested that the second sentence in this section could be changed to read, “It would not include an irrigation ditch, a canal, a storm or surface water runoff device, or another entirely artificially open watercourse.” She pointed out that artificial means something that does not occur naturally. She suggested that the word “open” belongs in the second sentence because it states that open streambeds that do not occur naturally would not be included in the definition of a stream. As written, when something man made becomes fish bearing, it would no longer be considered artificial. It would be considered a stream. Commissioner Hall said it would still be

considered artificial, but it would also be considered a stream. Commissioner McClelland suggested that perhaps the word "artificial" is problematic. Commissioner Hall agreed that perhaps "artificial" might not be the best term, but he felt the intent was clear enough.

Commissioner Hall emphasized that he absolutely does not want to use the term "open" in the first sentence of this section. Using the term "open" in the first sentence would immediately eliminate everything that is in a pipe. Commissioner McClelland agreed that "open" could be removed from the first sentence, but its use in the second sentence provides further clarification. Mr. Stewart agreed with Commissioner McClelland's analysis of the structure of the definition for "streams." He said it is also important to recognize that once the City declares something a stream, they must classify the stream in order to identify the required buffers and setbacks. He said one of the stream classifications is "intentionally created streams." Even artificial open watercourses can be declared streams and be regulated as an "intentionally created stream." This would further qualify and exclude some types of streams from regulation.

Mr. Stewart said the most contentious item has been the "classification of piped streams." The amendments proposed by Commissioner Hall would clarify this issue by declaring that piped watercourses are critical areas that are entitled to a 10-foot buffer. Staff believes this amendment offers a good solution because there should normally be at least a 20-foot drainage easement over a pipe. The setback requirement recommended by Commissioner Hall would also serve to encourage the option of daylighting piped-watercourses. He explained that, as the code currently exists, if a property owner wants to daylight an unregulated piped watercourse that is located in his backyard, it would become a Class II Stream and would require a 100-foot buffer. This serves as a disincentive for daylighting streams. Commissioner Hall's proposed amendments would encourage daylighting streams, recognizing that a property owner would only be required to provide a 10-foot buffer. He added that Commissioner Hall's amendment would also bring the proposed regulations into compliance with the recent appellate court case (Gaston Case).

Commissioner Kuboi said that when he read the proposed language for Amendment 1 several months ago, he thought it meant that a stream going into a pipe would be considered a stream. The term "unless they are used by salmonids" was the qualifying statement that would restore the status of the piped watercourse as a stream. Mr. Stewart explained that there are two issues at play in the proposed definition: whether the watercourse is open or closed and whether or not it is a stream. Commissioner Kuboi said he supports Commissioner Hall's proposal to amend the language in this section to provide further clarification regarding its intent.

Commissioner Hall clarified that the term "intentionally created streams" referred to by Mr. Stewart was deleted in the staff recommended amendments because it creates confusion and conflict with the definition of streams (See Item E on Page 73 of the Staff Report). Commissioner Hall further clarified that the current Development Code defines streams as those areas in the City of Shoreline where surface waters produce a defined channel or bed. Staff proposed to insert the word "open," which by definition would mean that a piped watercourse would not be considered a stream. He pointed out that public sentiment was strong in opposition to the staff's recommendation, and his proposed amendment was an attempt to resolve the concern. As per his proposed language, a stream would be any area where surface

waters produce a defined channel or bed, except for the things that are listed in the second part of the sentence.

COMMISSIONER HALL MOVED TO AMEND HIS MOTION TO CHANGE THE LANGUAGE HE PROPOSED FOR SECTION 20.20.046.S TO READ AS FOLLOWS: "THOSE AREAS WHERE SURFACE WATERS PRODUCE A DEFINED CHANNEL OR BED, NOT INCLUDING IRRIGATION DITCHES, CANALS, STORM OR SURFACE WATER RUNOFF DEVICES 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." VICE CHAIR PIRO AGREED TO THE AMENDMENT.

Commissioner Broili said he would support Commissioner Hall's proposed amendment, but he has a problem with not including irrigation ditches, canals and storm or surface water runoff devices in the definition of a stream. He suggested that this could serve to violate the integrity of all of the streams because whatever happens in these waterways eventually ends up in the streams. He concluded that perhaps his concern could be addressed some other way.

Vice Chair Piro said he is not fully settled on taking "intentionally created streams" out of the ordinance. He said he believes that some distinction between the types of artificial watercourses would need to be made at some point in time.

Commissioner McClelland pointed out how long the Commission has spent dealing with just the first amendment on the matrix. She suggested they focus on the real issue of whether or not the City will state, once and for all, in plain English, that if a fish swims through a watercourse, it is a stream. Once it is declared a stream, the City must protect and regulate it, and that is where the trouble begins.

THE AMENDED MOTION CARRIED 6-0.

Amendment 2 (Section 20.80.030 – Exemptions)

COMMISSIONER HALL MOVED THAT THE COMMISSION RECOMMEND APPROVAL OF PROPOSED AMENDMENT 2 (SECTION 20.80.030) AS PRESENTED ON THE MATRIX. COMMISSIONER MCCLELLAND SECONDED THE MOTION.

Commissioner Hall explained that the intent of this proposed amendment was to recognize that the City is balancing environmental protection with other goals of both the Growth Management Act and the Shoreline Management Act. The Commission also recognizes that public beach access is extremely important to the community, as voiced in public testimony regarding the critical areas ordinance and the Echo Lake proposal. He summarized that the proposed amendment would clarify the Critical Areas Ordinance so it is understood that certain water recreation related activities would be allowed in critical areas.

THE MOTION CARRIED 6-0.

Commissioner Broili pointed out that since a motion is on the table to approve the amendments identified in the matrix, it is not really necessary for the Commission to take a separation action of approval for each one. The remainder of the Commission agreed.

Amendment 3 (Section 20.80.080 – Alteration or Development of Critical Areas)

COMMISSIONER HALL MOVED THAT THE COMMISSION ACCEPT PROPOSED AMENDMENT 3 (SECTION 20.80.080) AS PRESENTED ON THE MATRIX. COMMISSIONER MCCLELLAND SECONDED THE MOTION. THE MOTION CARRIED 6-0.

Amendment 4 (Section 20.80.230 – Required Buffer Areas)

Commissioner Broili asked staff to explain why it is important to remove the word “conclusively” from this section. Mr. Torpey answered that this recommendation came from the City’s Critical Areas Ordinance Consultant. It was felt that the term was too subjective. He explained that geotechnical reports, in and of themselves, are professional documents that do not have a finish line.

THE COMMISSION ACCEPTED PROPOSED AMENDMENT 4 AS DRAFTED ON THE MATRIX.

Amendment 5 (Section 20.80.270 – Classification)

Commissioner Hall explained that in the original draft that went out for public comment, there was no explicit protection given to the Puget Sound Shoreline. To some extent, protection would be provided anyway because of fringing wetlands and other critical areas issues. But several citizens expressed their belief that additional protection of Puget Sound was important. He also reminded the Commission of the recent appellate court case involving Pierce County’s decision not to designate marine shorelines in their critical areas ordinance. He concluded that designating the City’s marine shorelines as critical areas, as per his proposed amendment, would be important not only on procedural grounds, but the community also wants to protect the salmon habitat. The Critical Areas Ordinance has placed substantial buffers on salmon bearing streams, but there is a gap as far as the Puget Sound Shoreline is concerned even though the record documents that there is salmon in the marine near-shore areas. He referred to Page 146 of the Commission’s packet, which describes the marine near-shore areas and talks about their functions for fish and wildlife habitat. It also points out on Page 147 in Paragraph 4.3.2 that “vegetated marine riparian zones are lacking within the marine near-shore area within the City limits.” He said this suggests that designating the shoreline and the water as a fish and wildlife habitat conservation area is critical to protect the salmon that are there. But he does not think it is necessary to require a 150-foot buffer along the shoreline. The proposed amendment would add to the fish and wildlife habitat areas.

Commissioner Hall emphasized that instead of just saying that the City would designate fish and wildlife habitat areas, the proposed amendment takes the next step by designating, as part of the ordinance, fish and wildlife habitat conservation areas that meet the listed criteria. In addition, it would not preclude the identification of other types of habitat they want to protect. It makes it explicit that all regulated streams and wetlands and their buffers are fish and wildlife habitat areas as determined by qualified specialists. The proposed amendment would improve the staff's recommendation by addressing the public comments they heard about protecting Puget Sound.

THE COMMISSION ACCEPTED PROPOSED AMENDMENT 5 AS DRAFTED ON THE RIGHT HAND COLUMN OF THE MATRIX.

Amendment 6 (Section 20.80.470 – Classification)

Commissioner Hall said this section is also connected to his proposed amendment regarding piped streams.

Commissioner Broili pointed out that in the staff's proposed amendment, Item B is related to Type II Streams, and in Commissioner Hall's proposed amendment, it is Type III. The Commission agreed that Commissioner Hall's proposed amendment should be renumbered.

COMMISSIONER HALL MOVED THAT THE COMMISSION ADOPT AMENDMENT 6 ON PAGES 178 THROUGH 180 OF THE STAFF REPORT AS AMENDED BY THE CHANGES IDENTIFIED ON HIS HANDOUT WITH CORRECTIONS TO THE LETTERING. VICE CHAIR PIRO SECONDED THE MOTION.

The Commission concurred that the opening paragraph and Items A and B of Section 20.80.470 are acceptable as proposed by the staff.

Commissioner Hall referred to the language he proposed for a Type III Stream, which was based on a letter the City received from the Washington Department of Fish and Wildlife. He summarized that his proposed language states that if a watercourse is smaller than two feet in width and does not have salmon, it would not be classified as a Type III Stream. The Commission concurred with Commissioner Hall's proposed amendment to the definition for a Type III Stream.

Commissioner Hall said his recommendation is also that the Commission not amend Section 20.80.470 to include a waiver of presumption of salmonids fish use based on water quality parameters. He said this recommendation is in response to public testimony. He recalled the example provided at a previous meeting by Commissioner Broili in which the only water quality problem is that the water is too warm. He said this type of problem should not prevent the stream from being treated as a salmon stream. **The remainder of the Commission concurred that the first paragraph on Page 180 of the matrix should be deleted from the proposed amendment.**

Commissioner Hall said that now that the City's definition identifies piped streams as streams, they should avoid inadvertently creating a 100-foot buffer on a culvert. He said he does not feel this would

provide an appropriate balance, and it would discourage people from opening the streams. He recommended, and the remainder of the Commission agreed, that a new stream type be created in this section to read, "Piped stream segments are those segments of streams, regardless of their type, that are fully enclosed in an underground pipe or culvert." He also recommended that table in Section 20.80.480.B be amended to add a new row for a piped stream segment. The piped stream segment would identify a standard 10-foot buffer and a minimum 10-foot buffer regardless of the stream type.

Commissioner McClelland summarized that Commissioner Hall's proposed amendment would result in a 10-foot maximum buffer requirement on both sides of a piped stream. Commissioner Hall clarified that, as per his proposed language, a 10-foot buffer would be required on each side of a piped stream, even if it were not daylighted. This would be consistent with the buffer that another part of the code would require if the stream were daylighted. The amendment would make this section consistent with the restoration section of the ordinance, and there would no longer be a disincentive for daylighting a stream.

Commissioner McClelland pointed that there are many places where piped streams go through residential properties. Commissioner Hall said the new provision would prohibit any future development that would have an adverse impact on a critical area based on the City's overall Critical Areas Ordinance. He agreed that the proposed amendment would have some impact to property owners, but he felt it would create the appropriate balance. Mr. Stewart clarified that uses that were legally established would be allowed to continue unless they are abandoned for a period of two years or more. However, no expansion, intensification or new construction would be allowed in the buffer area.

Commissioner Kuboi asked if there is any way a stream could somehow be put into a culvert and then daylighted just so that a person could obtain the reduced buffer. Mr. Stewart said that placing a stream into a culvert would not be an easy or practical option. He further advised that in order to daylight a stream, you would have to go through a series of studies and analysis to make sure it would not change the flows, etc. The design would have to be approved through a City permit, as well as a permit from the Department of Fish and Wildlife.

Mr. Stewart pointed out that staff added a new item to Section E.3 of their proposed amendment to address streams that are planned for removal of private dams that will result in a fish passable connection to Lake Washington or Puget Sound. He explained that there is currently a case on Boeing Creek where there is a private dam that is likely to be removed within the six-year period, and it is important that this be captured as a stream to be used by salmonids. **Commissioner Hall noted that the word "for" should be added between the words "planned" and "removal."**

THE MOTION WAS APPROVED 6-0.

Amendment 7 (Section 20.80.480 – Required Buffer Areas)

Mr. Stewart reminded the Commission that this section is a new provision having to do with the restoration of piped watercourses, and was used by Commissioner Hall to create the proposed

amendments that were previously discussed. The proposed amendment would change the wording from "the applicant shall seek written agreement" to "the applicant shall obtain written agreement." He explained that this would require an applicant to obtain his/her neighbor's approval.

Commissioner McClelland asked if the new definition the Commission just accepted for a piped stream segment in Section 20.80.470 would be consistent with Item 1 of Section 20.80.480 which states "the City encourages the opening of previously channelized/culverted streams and the rehabilitation and restoration of streams." Mr. Stewart answered affirmatively, except when the pipe or culvert is opened it would be regulated under Section 20.80.480. Commissioner Hall clarified that channelizing means that rather than having a natural bed, a stream has been squeezed into an artificial channel. The proposed language states that even if it is not in a culvert, there should be incentive to restore channelized watercourses as well.

Mr. Stewart suggested that Item 1 could be changed by replacing "channelized/culverted" with "channelized, piped and culverted." He pointed out that this language reiterates a policy and statement of intent. Commissioners Hall and McClelland suggested that the word "previously" be deleted. Commissioner Hall pointed out that the word "determine" in the last line of Item 2 on Page 181 of the matrix should be changed to "determined."

Commissioner Kuboi noted that the ordinance includes the terms called "piped watercourses," and "piped stream segments." He said he would assume that a piped stream segment would be a subset of piped watercourses. Commissioner Hall suggested that the words "watercourse sections" could be changed to "stream segments." Mr. Stewart noted that Item H should also be changed by replacing "watercourses" with "stream segments."

Mr. Stewart requested that the word "channelized" in Section 1 be deleted, as well. Commissioner Kuboi agreed and pointed out that the word "channelized" introduces a whole different category that isn't covered by the definition of a "piped stream segment." The Commission agreed that Item 1 should read "The City encourages the opening of piped stream segments and the rehabilitation and restoration of streams." They also agreed that in the last sentence of Item 2, the word "channel" should be changed to "stream segments."

Commissioner McClelland pointed out that Item H already speaks to the restoration of piped stream segments, and the numbered items under Section H fall into the category of stream restoration. Commissioner Broili suggested that the term "rehabilitation" be deleted from Item 1. The Commission concurred that Item 1 should be changed to read, "The City encourages the opening and restoration of piped stream segments."

Commissioner Hall summarized the Commission's changes to Section 20.80.480 as follows:

- **Section H – Restoring piped stream segments.**
- **Section 1 – The City encourages the opening and restoration of piped stream segments.**

- **Section 2 – When piped stream segments are restored, a protective buffer shall be required Opened stream segments shall be used to support fish access unless determined to be unfeasible by the City.**

Commissioner McClelland suggested that Item 3 be changed by replacing “Removal of pipes conveying streams” with “Opening piped stream segments.” The remainder of the Commission supported this change.

THE COMMISSION ACCEPTED THE PROPOSED CHANGES TO SECTION 20.80.480 AS AMENDED BY THE COMMISSION

Commissioner Hall’s Proposed Amendments to Section 20.80.480 (not on the matrix)

Commissioner Hall pointed that as per this code language, trails could be constructed in a buffer areas if they are consistent with the listed criteria. He suggested that since the Commission has agreed to identify a piped stream segment as a stream, the criteria listed in this section should be softened to make it easier to construct a trail over a culvert.

COMMISSIONER HALL MOVED THAT SECTION 20.80.480.D BE AMENDED TO ADD A NEW PARAGRAPH BEFORE ITEM 3 THAT WOULD READ, “THE CONSTRUCTION OF TRAILS OVER AND IN THE BUFFER OF PIPED STREAM SEGMENTS; OR” VICE CHAIR PIRO SECONDED THE MOTION.

Commissioner Hall said this would create a new exception that would allow a trail to be constructed over and in the buffer of a piped stream segment without having to meet the low-impact development criteria because the stream is in a culvert anyway.

Commissioner Kuboi reminded the Commission that they created the concept of “piped stream segments” with an associated 10-foot buffer. He said that while this term is appropriate for portions of a stream that are piped, it appears the language still calls it a piped stream segment after it has been daylighted. He questioned if the Commission should identify a new term for a piped stream segment after it has been daylighted. Commissioner Hall explained that once a stream is taken out of a pipe, it no longer meets the definition for a piped stream.

Commissioner Kuboi inquired if the ordinance would provide a mechanism for someone to daylight a stream on either side of a trail crossing. Commissioner Hall said that if a stream were daylighted, the culvert could be removed and a bridge could be constructed over the open stream. He felt that a bridge over an open stream would be better than a culvert. Mr. Stewart pointed out that Items 4 and 5 of the same section would apply in these situations.

THE COMMISSION UNANIMOUSLY ACCEPTED THE MOTION.

Next, Commissioner Hall suggested that Section 20.80.480.D.6 be amended to allow stormwater facilities for piped stream segments. Mr. Stewart inquired if this amendment would be necessary given

the amendment the Commission previously accepted. He also pointed out that including language regarding piped stream segments in this section could further limit where stormwater management facilities could be located. Commissioner Hall agreed with Mr. Stewart and withdrew his recommendation to amend the section.

Commissioner Broili pointed out that in Section 20.80.480.D.6, the term "grass lined swales" should be changed to "bioswales." The remainder of the Commission agreed. It was agreed that staff should conduct a word search to identify and change this term in other locations of the ordinance.

COMMISSIONER HALL MOVED THAT THE COMMISSION AMEND THE STAFF'S RECOMMENDATION FOR SECTION 20.80.480.G TO READ, "RELOCATION OF A TYPE I, II, OR III STREAM SHALL BE ALLOWED ONLY WHEN THE PROPOSED RELOCATION IS PART OF AN APPROVED MITIGATION OR REHABILITATION PLAN, WILL RESULT IN EQUAL OR BETTER HABITAT OR WATER QUALITY, AND WILL NOT DIMINISH THE FLOW CAPACITY OF THE STREAM. RELOCATION OF A TYPE IV STREAM SHALL BE ALLOWED ONLY WHEN THE PROPOSED RELOCATION WILL RESULT IN EQUAL OR BETTER HABITAT AND WATER QUALITY AND WILL NOT DIMINISH THE FLOW CAPACITY OF THE STREAM."

Commissioner Hall explained that since the City has provisions for allowing the relocation of Type I, II and III Streams, they should provide provisions for relocating a Type IV Stream. He noted that, as per his proposed amendment, an approved mitigation or rehabilitation plan would not be required for a Type IV Stream. He felt the proposed amendment would support the opportunity for development where there might be a small, intermittent stream, as long as there would be equal or better habitat and water quality without diminishing the flow capacity.

Mr. Stewart asked how Commissioner Hall's proposed amendment would address a situation where an applicant requests to reopen a piped stream segment as part of a stream relocation project. Commissioner Hall said that if the piped stream segment were a Type I, II or III Stream, an approved mitigation or rehabilitation plan would still be required. If the segment were a Type IV Stream, the applicant would only have to ensure that the end result would be equal or better habitat and water quality.

Commissioner Broili expressed his concern about Commissioner Hall's proposed amendment for Item G. He said all stream location proposals, regardless of the stream type, should be required to provide an approved mitigation or rehabilitation plan.

COMMISSIONER HALL WITHDREW HIS MOTION.

The Commission agreed to change Item G to read, "Relocation of a stream shall be allowed when . . ." They also agreed that staff should also conduct a word search to replace all "piped watercourse" terms with "piped stream segments."

Vice Chair Piro suggested that the Commission consider their remaining meeting time and adjust their review of the proposed amendments on the matrix to allow time for them to consider Commissioner Hall's proposed amendments to the section related to tree protection in critical areas. He pointed out that there are members of the audience who are particularly interested in tree protection. The Commission agreed to work as quickly as possible through the remaining items on the matrix and then take up the issue of tree protection afterward.

Commissioner Hall's Proposed Amendments to Section 20.80.460.A (not on the matrix)

Because the Commission already addressed the definition for stream, Commissioner Hall suggested that the definition in Section 20.80.460.A be amended to match the definition in Section 20.20.046.S. Vice Chair Piro suggested that rather than including the entire definition for stream in this section, they could make reference to the definition that was provided in Section 20.20.046.S. Commissioner Hall said he originally made this suggestion to the staff, but staff felt that including the definition in this section, as well, would improve the readability and usability of the ordinance.

The Commission agreed to amend Section 20.80.460.A to be consistent with Section 20.20.046.S.

Amendment 8 (Section 20.80.320 – Classification)

Mr. Torpey explained that this proposed amendment was based upon a recommendation from the Department of Ecology. Commissioner Broili expressed his belief that the more closely the City's ordinance is aligned with the State's, the stronger it would be.

Mr. Torpey pointed out that the proposed amendment would not impact buffer widths. The Department of Ecology's Western Washington Manual does not provide any buffer information. It just provides a typing system.

Commissioner Hall clarified that, as per the proposed amendment, Chapter 20.80.320 would be replaced with a reference to the Department of Ecology's Manual, and Chapter 20.80.330 (Page 46 of the Staff Report) would establish the buffer widths. Commissioner Hall inquired if the Department of Ecology's classification scheme would be compatible with the City's typing system and buffer widths. He said he could not support the proposed amendment without further information from the staff. Mr. Torpey reported that he participated in a 3-day seminar with the Department of Ecology regarding their Western Washington Manual. It was identified that there were changes between the old method and new method. There are a number of differences, and he said he does now know if he can provide a definitive answer to show how the manual would impact the City's typing system. Vice Chair Piro asked that staff also consider how the Department of Ecology's classification scheme has impacted other jurisdictions.

Mr. Stewart said if the Department of Ecology's Wetland rating system is adopted into the City's ordinance, they must make sure that the definitions are integrated completely with the buffers in the City's ordinance. Commissioner Hall suggested that rather than accepting the proposed amendment to Section 20.80.320 now, he would rather place the issue on the Commission's agenda for future discussion. He emphasized that he would not be in favor of revisiting the entire Critical Areas

Ordinance at that time, but just this one item. He clarified that he supports the staff recommended draft language, which increases buffer widths in several cases as shown on Page 46 of the Staff Report, improves the definitions, and makes the ordinance more clear and protective. If, in the future, the City wants to completely change the way they regulate wetlands to match the Department of Ecology's manual, he would prefer to hold a separate public hearing and discuss the proposed change after adoption of the Critical Areas Ordinance Update. Commissioner Broili asked if the Commission would have the authority to tweak the Critical Areas Ordinance again after the update has been approved by the City Council. Mr. Stewart explained that as per the City's code, any person may request the City Council, the Planning Commission or the Planning Director to initiate amendments to the text of the Development Code, and amendments would not be constrained to annual review.

The Commission agreed to accept the language for Amendment 8 as proposed by staff in the left hand column of the matrix. They also agreed to conduct a more thorough review of Section 20.80.320 and its consistency with the Department of Ecology's wetland rating system at a future date.

Commissioner Kuboi asked if there would be any repercussions from the State if the City did not adopt their wetland rating system as part of the 2005 Critical Areas Ordinance Update. Mr. Torpey explained that the state's proposed amendment is a recommendation for change. Verbally, they have indicated that they do not have extremely strong feelings one way or the other, but they would prefer the adoption of their rating system as best available science.

Amendment 9 (Section 20.30.030.F – Exemptions)

Vice Chair Piro inquired if the word "isolated" was defined in the ordinance. Mr. Torpey answered that "isolated" is an industry term for wetland biologists meaning "not contiguous with a stream." One example would be a Type IV Wetland that has functions and values near a stream habitat. This type of stream would not be considered isolated and would be typed and buffered differently.

Commissioner Hall reported that in a recent Supreme Court case, it was determined that the Federal Government had the authority to regulate wetlands because they are waters of the United States, which could be used for interstate commerce. Thus, the Corps of Engineers was given the authority to regulate wetlands. He explained that, over time, the Corps authority has been tested in courts. One test that was used was called the "Migratory Bird Test." If a bird flies across state lines and lands in a wetland, the Corps would identify it as one used for interstate commerce. Many people felt that, in this case, the Federal Government was overstepping its bounds. If the wetland had no connection to a navigatable stream, the Federal Government should not be able to regulate it just because a bird flew there. The case went the United States Supreme Court and the Corps of Engineers lost their authority to regulate isolated wetlands. However, local governments can still do so. The term isolated, as interpreted by the courts, means that it has no hydrological continuity and does not exchange ground water with a stream or Puget Sound.

Vice Chair Piro suggested that the ordinance should provide some reference in the definition for the term "isolated" as per Commissioner Hall's explanation. Mr. Stewart referred to Page 45 of the Staff Report,

which references the typing of a Type IV Wetland (Section 20.80.320.B). He noted that this language does include the term "hydrologically isolated." He clarified that the classification of a Type IV Wetland is defined as an isolated 2,500 square foot wetland, and an exemption would be allowed for an isolated wetland of less than 1,000 square feet that is within the Type IV Wetland. Vice Chair Piro suggested that the word "hydrologically" be added before the word "isolated."

Commissioner Hall pointed out that as per the recommended code amendment, any isolated wetland of less than 1,000 square feet would be exempt, even if it were in a pristine natural condition. He said he prefers the staff's original recommendation since it would provide for the protection of even small wetlands that are in their natural condition. Mr. Torpey advised that the proposed amendment to the staff's language came from the City of Seattle's ordinance. It was noted that as much as the City of Shoreline has in common with the City of Seattle, it is important to recognize that Shoreline has more natural areas to preserve.

Commissioner McClelland asked how the City would determine whether or not more than 80 percent of a wetland had been altered. She suggested that perhaps the consultant recommended the deletion of this language because it would be expensive to make a determination for a wetland that is small. Mr. Stewart pointed out that either proposal would require the services of a qualified expert.

With the exception of Chair Harris, all of the Commissioners agreed to maintain the staff's original draft language for Section 20.80.030.F, with inclusion of the word "hydrologically" before "isolated."

Amendment 10 (Section 20.80.080 – Alteration or Development of Critical Areas)

COMMISSIONER HALL MOVED THAT THE COMMISSION ADOPT THE PROPOSED AMENDMENT (RIGHT HAND COLUMN) TO SECTION 20.80.080 AS OUTLINED ON THE MATRIX.

Mr. Torpey said this proposed amendment was submitted by the Washington State Department of Fish and Wildlife. The City has five existing criteria, and they recommended the addition of a sixth.

VICE CHAIR PIRO SECONDED THE MOTION.

Commissioner Hall explained that when an action is taken that would have an adverse environmental impact, the City's code already requires that the impact be mitigated. The process of determining how to mitigate goes through a sequence of steps. The ideal situation would be to avoid the impact. But if the impact cannot be avoided, it should be minimized using the sequence of steps. No matter what steps are taken, it is important that the situation is monitored and corrective measures are taken.

Vice Chair Piro said he supports the requirement of monitoring and taking appropriate corrective measures. This would allow the City an opportunity to make sure that what an applicant intends to accomplish by engaging in a mitigation program is actually being achieved.

Commissioner McClelland said she likes the term "applicant" better than the term "proponent" because "proponent" suggests there are "opponents." She expressed her concern that the language in this section would place all the burden of proof on the applicant, including the monitoring. Once a project is constructed, she inquired if the developer would be responsible to monitor the situation. Mr. Stewart said the responsibility of monitoring would run with the land and would become a liability of the permit. He said the City has a number of permits that require monitoring. Mr. Torpey added that, typically, these projects are bonded for a certain dollar amount. Any future owner would also purchase the conditions that are attached to the property, which would include mitigation. Even if an applicant were no longer available to monitor the mitigation, the bond would insure that mitigation occurs.

Again, Commissioner McClelland expressed her belief that "proponent" is a very specific title. The responsible party would be whoever is obliged to complete the mitigation, and it may or may not be the proponent. The Commission discussed the appropriateness of changing the term "proponent." Mr. Stewart explained that from a practical point of view, the applicant must either be the owner or an authorized agent of the owner, and that is how the City would define the project proponent. A permit would then be conditioned and issued to the applicant, who is the owner or the project proponent, and the conditions would run with the land. He summarized that the terms "owner," "applicant" and "project proponent" are really synonymous.

The Commission accepted the proposed amendments to Section 20.80.080 as presented in the right hand column of the matrix.

Commissioner Hall reminded the Commission about the main motion still on the table. The Commission must make a decision about whether they want to conclude further deliberation and vote on the main motion now or if they want to continue deliberations to the next meeting. He said that if the Commission intends to take action now and close deliberations, he has a few more amendments he would like to put forward.

The Commission agreed to continue their deliberations to the next meeting, August 4, 2005.

9. UNFINISHED BUSINESS

Chair Harris said he believes that at least some of the Commissioners would be invited to attend the City Council's meeting of August 22nd, at which the cottage housing issue would be discussed further. He said it is unclear what the outcome of the Council's meeting would be. Mr. Stewart reminded the Commission that any change to the Cottage Housing Ordinance would require a public hearing by the Planning Commission and City Council approval. He reminded the Commission that anyone could submit a proposed amendment to the Development Code to the Planning Director, the Planning Commission, or the City Council. The Planning Commission would then conduct a public hearing and forward a recommendation to the City Council for a final decision on the matter. The City Council also has the option of setting up additional citizen advisory groups, etc.

Commissioner McClelland pointed out that even though the extended moratorium would last until February, it could be ended earlier if a decision were made. She emphasized that the Commission's

request was not intended to be a delay tactic. She said that she spoke to several City Council Members who seemed to agree that extending the moratorium would be wise in order to allow sufficient time for the Commission to study the issue carefully.

Mr. Stewart said there has been a certain level of frustration with the cottage housing issue, first because the staff and the Planning Commission were busy with the Comprehensive Plan and the master plans. They also have to meet the deadline for the Critical Areas Ordinance. He said the Commission minutes are very clear that they chose to meet the State mandate by completing their work on the Critical Areas Ordinance Update first.

Commissioner Hall expressed his opinion that he does not think the Commission did the right thing by postponing a decision and asking the City Council to extend the moratorium on Cottage Housing. He said he views his appointment to the Planning Commission as being tasked with collecting and considering public input, reviewing staff recommendations and other information, and making a recommendation to the City Council on Development Code issues. In this one case, the Commission failed to take timely action, and he was disappointed, and he would have preferred the Commission to have made a clear recommendation.

Commissioner Broili said the Commission's process of conducting deliberations, which includes listening to public comments and making decisions on facts, takes time. To be pushed and pressured to make snap decisions without careful consideration would not do anyone any justice. He said that since he has been on the Commission, he has felt they have been asked to make snap decisions that were not fully thought through or articulated as well as they might have been. He said he disagrees with Commissioner Hall's position.

Vice Chair Piro agreed it is incumbent on the Commission to make decisions as quickly as possible. However, he felt the cottage housing issue reached a point of complexity where he was not comfortable making a final decision. He recalled that the Commission previously went through a very similar process on cottage housing and felt that they had worked through all of the issues to come up with a solution that would resolve the problems. But their recommendation was rejected by the City Council. In light of this, he said he wants to make sure that the Commission's next recommendation to the City Council deals with all of the outstanding issues.

Commissioner McClelland recalled that some of the Commissioners expressed their thought that design review might be an appropriate tool for addressing the cottage housing issue. But the staff did not have time to provide information to the Commission to address whether or not the proposed amendments would have satisfied the public or whether having design review would make the process better. She felt the Commission was ill prepared to move on with a recommendation to the City Council.

Chair Harris said the Commission must be able to articulate a reason why cottage housing is so important and why it cannot be eliminated—especially when the community does not appear to support it. Commissioner McClelland pointed out that the Commission does not have a measurement of how many people are opposed or in support of cottage housing. Secondly, she said she does not believe the

Commission is trying to push forward the concept of cottage housing. Rather, they are trying to analyze it.

Commissioner Kuboi asked if staff's progress on the Cottage Housing Ordinance would be placed on hold until after the City Council makes a decision regarding the process on August 22nd. Mr. Stewart answered that staff would continue to proceed with the schedule outlined by the Commission.

Commissioner Kuboi reported that he has sent a couple of email request to staff that the Commission have some input or say into what the review effort would encompass. He would like more information about what the review would entail before it starts so that he can feel comfortable they are heading in the right direction. Mr. Stewart reminded the Commission that they have completed the public hearing process and they are now in their deliberative stage. However, the Commission has the option of reopening the public hearing. Commissioner Kuboi recalled that the Commissioners were supposed to provide comments back to staff by a certain date, and this input was going to be used by staff to determine what the next effort would encompass. He said he was hoping to have some input on what staff plans to do. It is important that staff is moving in the right direction to provide the necessary information for the Commission to continue their deliberations.

Vice Chair Piro recalled that there still might be some differing opinions amongst the Commission about whether they should amend the Cottage Housing Ordinance or eliminate it altogether. He agreed that the Commission ended their last deliberation with the charge for staff to work through several of the Commission's issues that kept them from reaching closure. Mr. Stewart said he would work with staff to make sure they are heading in the right direction with their additional work on the Cottage Housing Ordinance.

10. NEW BUSINESS

Commissioner Hall asked that a discussion regarding the Department of Ecology's Wetlands Manual and wetland buffers be placed on the Commission's extended agenda for action at a future date.

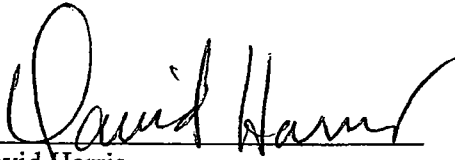
11. REVIEW OF AGENDA FOR AUGUST 4, 2005

Vice Chair Piro asked that staff work with the appropriate City employees to make sure the air in the meeting room is comfortable. Mr. Stewart suggested that the Commission might want to consider seeking an alternative location.

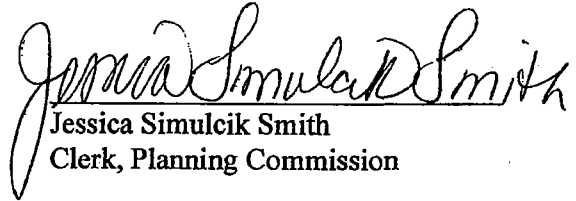
Chair Harris reviewed that the Commission's deliberations on the Critical Areas Ordinance Update was continued to the August 4th meeting. It was noted that no new information was requested from the staff. Vice Chair Piro asked that Commissioners be provided with a copy of Commissioner Hall's recommended amendments regarding the protection of trees.

12. ADJOURNMENT

The meeting was adjourned at 10:00 p.m.

A handwritten signature in cursive script, reading "David Harris".

David Harris
Chair, Planning Commission

A handwritten signature in cursive script, reading "Jessica Simulcik Smith".

Jessica Simulcik Smith
Clerk, Planning Commission

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION SUMMARY MINUTES OF REGULAR MEETING

August 4, 2005
7:00 P.M.

Shoreline Conference Center
Board Room

PRESENT

Chair Harris
Vice Chair Piro (arrived at 7:10 p.m.)
Commissioner McClelland
Commissioner Kuboi
Commissioner Phisuthikul
Commissioner Hall
Commissioner Broili
Commissioner MacCully

STAFF PRESENT

Tim Stewart, Director, Planning & Development Services
Andrea Spencer, Senior Planner, Planning & Development Services
Matt Torpey, Planner II, Planning & Development Services
Jessica Simulcik, Planning Commission Clerk

ABSENT

Commissioner Sands

1. CALL TO ORDER

The regular meeting was called to order at 7:04 p.m. by Chair Harris, who presided.

2. ROLL CALL

Upon roll call by the Commission Clerk, the following Commissioners were present: Chair Harris, Commissioners Kuboi, Hall, MacCully, McClelland, Phisuthikul and Broili. Vice Chair Piro arrived at 7:10 p.m. and Commissioner Sands was excused.

3. APPROVAL OF AGENDA

The Commission discussed the importance of allowing time for everyone in the audience to address the Commission if they so desire. However, they agreed to delete Item 9 since all public comment could be accommodated as part of Item 6.

COMMISSIONER BROILI MOVED THAT THE AGENDA BE APPROVED AS AMENDED. COMMISSIONER MACCULLY SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

4. DIRECTOR'S REPORT

Mr. Stewart referred the Commission to a copy of the memorandum he sent to the City Council regarding the Growth Management Act Growth Targets. He explained that the City Council recently discussed this issue, and a number of the Council Member candidates have also asked him for more information. He briefly walked the Commission through the numbers so that they have a clear understanding of where the City stands as far as growth targets, capacities, etc.

Mr. Stewart explained that the Growth Management Act requires the City of Shoreline to help accommodate the growth that is projected to occur in King County. The County has been given a population target, and through an elaborate process by the Growth Management Planning Council, the population was allocated amongst the cities and unincorporated areas. He reviewed that King County is expected to accommodate 151,000 new housing units between 2001 and 2022 and Shoreline's share is 2,651 new units. He noted that the target number was accepted by the Shoreline City Council in July of 2003.

Next, Mr. Stewart explained that the City is required to determine what their zoning capacity is under the current regulations. The Buildable Lands Report the City produced in 2002 stated that the City's capacity was 2,307. He said it is important for the Commission to understand that this report was completed immediately after the City adopted their Development Code and with limited empirical data. He said the bottom line is that the City has a gap of about 200 units between the target and buildable lands available. However, he said he does not have a significant concern about this gap for the following reasons:

- The City assumed that about 350 of the new units would be cottage housing. If the City were to limit or eliminate the opportunity for cottage housing, this number would be cut in half since the land could be developed as regular single family lots.
- The North City Sub Area has a capacity of 955 units, but this assumes the build out of North City and illustrates what the density could be if they really intensify and build urban neighborhoods. There is this same development potential in a number of other areas throughout the City. There are three special study areas identified.
- No additional capacity was assumed for areas of the City which have private covenants that prohibit any density increases. However, a court challenge could overturn the covenants, and additional capacity could be obtained in those areas, as well.
- There was no assumption that new units would be built in commercial zones, even though the development regulations would allow this to occur. It is assumed that over the 20-year period, the City would be able to easily produce more than 500 additional units in the commercial zones, which would easily cover the gap between the target and the City's buildable lands.
- There are currently three sub areas in the City (Paramount, Briarcrest and Ballinger), which have the potential of upzoning if the City goes through a planning process with the neighborhoods. No additional capacity was assumed for these neighborhoods.
- There are areas such as Fircrest, which also have the potential for additional housing units, but nothing has been assumed at this point.

- They did not assume any increase in capacity for affordable housing, even though the development code allows for a 50-percent bonus increase.

Commissioner Kuboi asked if studio apartments and other types of small apartments would be considered as one unit in meeting the growth targets. Mr. Stewart answered that any unit, regardless of size, would count as one unit.

Commissioner McClelland asked if the City knows for sure that Innis Arden and The Highlands developments have been built out. She said she has heard talk that there is vacant land in The Highlands. Mr. Stewart said that when restrictive covenants are placed on land, they are considered privately restricted development rights. The City has zoning that establishes buildable limits that are zoned and publicly controlled under police power. He emphasized that the City does not enforce private covenants since they are considered private matters between the property owners. However, the City does enforce zoning. For example, if a one-acre parcel had a private covenant that said it could not be further subdivided, but the zoning code allows four units, the City would approve a plat with four units. But the plat could be challenged in court because of the private nature of the agreement. When the City completed their projections in 2002, they were realistic and did not assume that any of the areas of the City that have private covenants would be further subdivided and developed.

With regard to housing being developed in commercial zones, Commissioner McClelland pointed out that now that the Central Shoreline Sub Area Plan has been adopted, additional housing could be constructed somewhere along Aurora Avenue. In addition, it appears that new housing would be developed at Echo Lake. Both of these areas are commercial zones. Mr. Stewart agreed and pointed out that the Echo Lake property was zoned as R-48, so there was already some assumed capacity in this location. Mr. Stewart cautioned that when units are lost as a result of new construction they must be deducted from the target number.

Mr. Stewart referred the Commission to the memorandum from Paul Cohen regarding the Cottage Housing deliberations. He asked that the Commissioners review this document and forward their questions and concerns to Mr. Cohen as soon as possible.

5. APPROVAL OF MINUTES

THE JULY 7, 2005 MINUTES WERE APPROVED AS DRAFTED. THE JULY 21, 2005 MINUTES WERE APPROVED AS AMENDED.

6. GENERAL PUBLIC COMMENT

Mike Jacobs, President of Innis Arden Club, spoke regarding the proposed changes to the tree conservation regulations. He recalled that Innis Arden has 52 acres of tree reserves. He reported that the club recently engaged in a survey of each significant tree, with the exception Boeing Reserve. A number of the significant trees have been identified as hazardous by the arborist they hired, and there have been situations in the past where trees have failed. He pointed out one particular situation that occurred in April of 2004 when a tree in the Bear Reserve snapped during a windstorm at 3:30 p.m. and landed

within 20 feet of a child who was walking home from Sunset Elementary School. This was a maple tree, and it ended up taking down the power line, as well. Mr. Jacobs explained that, unlike the City, if the Innis Arden Club is aware of hazardous trees but fails to take action to cure the defect and someone is injured, they would be held liable.

Mr. Jacobs asked that the Commission consider amending Section 20.20.024.H since the definition does not include any language related to trees that pose a danger to individuals. He explained that residents of Innis Arden walk through the trails daily. If they cannot manage the reserves to eliminate hazardous trees along the trails, they risk jeopardizing the safety of the residents.

Next, Mr. Jacobs referred to Section 20.80.030.J and said the Innis Arden Board is firmly behind the Stewardship Plan as recommended by staff. He urged the Commission to recommend its approval. He explained that the Stewardship Plan would enable the Innis Arden Club to work with City staff to formulate a plan to manage the reserves. The plan would be based on ISA standards, best available science, etc. He summarized that enactment of the Stewardship Plan is critical to their community.

Lastly, Mr. Jacobs provided a copy of other changes he would like the Commission to consider (see Exhibit 2). One change in particular was related to Section 20.50.320.D, which talks about removal of significant trees. He pointed out that while this section states that only six significant trees could be removed within a 3-year period, it does not specify a tract size. He said they would like to have this reduced to a 10,000 square foot tract. He noted that some of their reserves in non-critical areas are several acres in dimension. They also want to create views for members, and it is important that they be allowed to do so.

Dan Lyons, said he has lived in Shoreline for about 50 years and in Innis Arden for 35 years. He said he has great concern about the proposed changes and their impact to the Innis Arden reserves, which qualify as critical areas. While he recognizes that some changes must be made, it is important to make sure safeguards are put in place before authorization is given for widespread cutting of trees in the reserves. He said that, in the recent past, there have been objections expressed by some of the Board members that the City had no right to enter the reserves because they were private property. He said he believes this is ridiculous since the City has the responsibility of enforcing the rules. Mr. Lyons said he feels strongly about the provision that would allow six significant trees to be cut without any logical reason. He said this provision has been abused in the recent past, and trees have been cut only for view enhancement and no other purpose. He said they are counting on the City to create and enforce fair rules.

Al Wagar, said he recently retired as a Research Professor at the University of Washington College of Forest Resources, where he taught courses in urban forestry and wildland recreation, both of which emphasize the social as well as biological dimensions of forest management. In addition, he advised that he is a life member of the International Society of Arboriculture.

Mr. Wagar said he also participates on the Innis Arden Board of Directors where, in 1996, he worked with a fellow board member to develop a vegetation management plan for the ravines in Innis Arden. They sought a middle ground between those who felt any tree over six inches in diameter was sacred and those who felt any tree that blocks a portion of a view was an abomination. He expressed his belief that

there is middle ground that would allow them to maintain the ravines as attractive, wooded areas that provide soil stability and wildlife habitat, while still allowing views over or through them.

Mr. Wagar urged the Commission to adopt the proposed changes to Section 20.80.030.J (Item 13 on the Matrix), which is a provision for Critical Areas Stewardship Plans. Doing so would provide reasonable flexibility in the management of critical areas while maintaining oversight by the City of Shoreline. However, because the term "no net loss of functions and values" would be impossible to quantify, he suggested that Item 1 be changed to read, "The Plan will maintain essential functions and values of each critical area." Mr. Wagar explained that the reserves are dynamic systems that are in constant flux and have multiple functions and values, some of which are in conflict with each other, raising the issue of "net loss for which function." For example, he pointed out that most niches for wildlife would be maintained by having vegetation of many different heights, creating a multi-layered canopy. But a multi-layered canopy is the most dangerous in terms of fire. Mr. Wagar pointed out that vegetation in many of the ravines is dominated by early-successional hardwoods (alder and big-leaf maple) that are beginning to deteriorate. But if these areas were allowed or encouraged to revert to nearly pure stands of conifers, they would go through a long stage of canopy closure during which their value for wildlife would be greatly diminished.

Regarding soil stability and hydrologic values, Mr. Wagar said the roots of nearly any kind of wood vegetation would hold the soil together, and the hydrologic regimes and erosion problems of the ravines result almost entirely from conditions in watersheds that lie outside of Innis Arden. He said massive planting of trees in these watershed areas could greatly improve the conditions in the ravines. But greatly increasing tree canopies in the last half mile to the Sound would not have any impact.

Finally, Mr. Wagar referred to the proposed changes for Section 20.50.310 (Item 16 on the Matrix), where International Society of Arboriculture methods are mentioned. He urged the Commission to use the words "tree risk assessment" in place of "hazard tree analysis." He explained that some leading arborists prefer this terminology because it does not designate every tree analyzed as a "hazard tree" with the legal implications of being "on notice" that the tree must be taken down or there would be liability problems.

John Lombard, Executive Committee, Thornton Creek Alliance, Seattle, thanked the Commission for their thoughtful consideration of the issues the Alliance raised a number of months ago. He said the Alliance supports just about all of the actions the Commission took on the proposed amendments at their July 21st meeting, but he also has some concerns. Mr. Lombard said the Alliance appreciates the Commission's decision to designate Puget Sound as a fish and wildlife habitat conservation area. However, he said it is not clear to him, from the materials he received, whether there would be any sort of buffer requirement attached. Secondly, Mr. Lombard said that if there were a delay in seriously considering the Department of Ecology's recommendations for wetland ratings and buffers, the Alliance would like to know what the schedule for this would be. He commented that, without dealing with this recommendation, the City would not be following best available science. Therefore, they would be open to appeals to the Growth Management Hearings Board.

Lastly, Mr. Lombard referred to the tree cutting provisions for view preservation. He said the Alliance supports the recommendations made by Commissioner Hall for essentially all of the issues. He challenged the Commission to provide an example of where tree cutting according to the provisions of the proposed ordinance could, in fact, allow for no net loss of the functions and values of critical areas, since this is the standard the Growth Management Hearings Board is looking for. He cautioned that if the City tries to follow through with the proposed language, they could be very open to challenge.

Alan Kohn, said he has lived in his home for the past 33 years. He said that he is also a biologist affiliated with the University of Washington. While he doesn't claim the expertise in as relevant of an area as Mr. Wagar, he has some of the same concerns. He referred to Section 20.80.030.J (Item 13 on the Matrix), and said that while Commissioner Hall's proposed amendment would improve the language, it would still not be adequate. He recommended that this proposed section be deleted because it is contradictory. In addition, it appears to be logically impossible that trimming or cutting large trees would result in no net loss in functions and values of a critical area. The functions and values are not really explicitly stated in the proposed amendments, but it is clear that they refer to the environmental services of living organisms. Trees remove pollutants and carbon dioxide from the atmosphere. He pointed out that a 40-year old Douglas Fir would remove about 35 gallons of pure carbon dioxide from the atmosphere every day. In addition, there are other functions and values of trees listed in the best available science section, such as mitigation of runoff, etc.

Mr. Kohn pointed out that a Stewardship Plan would require a very large investment of time, effort and money on the City's part. However, there is no way that the plan would be able to offset the loss of functions and values that necessarily comes with any trimming and removal of trees. Lastly, Mr. Kohn expressed his belief that any provision in the Critical Areas Ordinance that would provide a way to eliminate the rules of the ordinance would be widely perceived as undermining and subverting the Critical Areas Ordinance.

Michael Rasch, agreed with the comments and recommended changes proposed by Mr. Jacobs, and he asked that the Commission seriously consider adopting them. He recalled that the City proposed the amendment to Section 20.80.030.J (Item 13 of the Matrix) because there had been a lot of friction between Innis Arden residents and the City. The Innis Arden community was established based on views, and over the years before the Critical Areas Ordinance was adopted, people were cutting or coppicing trees in the reserves to maintain their views. Coppicing trees leaves the root ball in place to preserve and prevent erosion. Recently, he said the City allowed more coppicing of trees to occur in one of the reserves. It is clear that the trees are not dead and they are shooting out sprouts. He said that when the Critical Areas Ordinance came into effect, all of the trees that were coppiced shot out sprouts and have now grown up and blocked views. He said it would not hurt to cut the trees back again to allow for views, even though some of the trees are located in critical areas. He expressed his belief that there is a solution for restoring and preserving views and maintaining the reserves so they don't erode and can continue to provide biodiversity. He said he believes the City's intent in proposing the Stewardship Plan as to allow the community to maintain its views and still protect the critical areas. No one wants the reserves to erode, but at the same time, they want to save their property values. There is a lot of money attached to having a view of the Sound. He asked that the Commission recommend

adoption of the Critical Areas Stewardship Plan provision without Commissioner Hall's proposed amendments.

Elaine Phelps, Vice President for Responsible Management of Innis Arden, said she has been appointed to represent the group on environmental matters. She said she is a resident of Innis Arden and served on the Board for four years, so she is familiar with the issues that have been presented by both sides. Ms. Phelps said she supports the efforts of Commissioner Hall to try and find a reasonable resolution to the Critical Areas Ordinance language proposed by staff in Section 20.80.030.J (Item 13 on the Matrix). She summarized that the proposed language is staff's solution to their perceived problem that vegetation management plans were not always upheld by the courts or by hearing examiners. She urged the Commission to pay careful attention to the legacy that will come from the decisions they make now. She said some of the people who spoke about preserving views never had a view to start with. They have created a view by removing trees, and this tempers her ability to give credence to the goal of allowing further cutting in the reserves.

Ms. Phelps stressed that the cumulative effect of cutting in the Innis Arden reserves is radically changing the environment, which is part of Shoreline and provides habitat for all kinds of wildlife. When Innis Arden was formed, one goal was to preserve the forested reserves. While Innis Arden does have some wonderful views, it is important to note that the lots located behind the reserves were less costly. So the people who are behind the reserves should understand that they are for all of Shoreline and not just for them to be able to cut to obtain better views. She agreed that hazardous trees that are located in areas that could have an impact on people should be removed, but when the hazardous trees are in the midst of a forest or grove, then perhaps their danger needs to be assessed more carefully.

Ms. Phelps said she worked with Mr. Wagar on the provisions for the vegetation management plan. While she was not totally satisfied with it, it was far better than no plan at all. Innis Arden doesn't have a plan now, so they cut trees regularly. She said it is important to think of the proposed Stewardship Plan language in the context of the entire City. If the City allows tree cutting in Innis Arden to protect views, they must allow it elsewhere in the City. She pointed out that the Critical Areas Ordinance has nothing to do with increasing the tax base or people's property values. Instead, it has to do with preserving and, if possible, improving critical areas. The Commission should carefully consider how the proposed Stewardship Plan would represent the goals of the Critical Areas Ordinance. Lastly, she thanked Commissioner Hall for his insightful approach to the language in this section. She urged the Commission to consider his recommended changes.

Maggie Taber, said she is a member of the Innis Arden Board and participates as the chair of the Reserves Committee. Ms. Taber strongly urged the Planning Commission to follow the staff's recommendation regarding the Critical Areas Stewardship Plan. The Innis Arden Board desperately needs something to work with. They had a vegetation management program, but it was recently voided by the City. The Innis Arden Board must be able to manage the reserves for both view and safety. She said she took some of the Commissioners on a tour of the reserves, but Commissioner Hall was obviously not impressed with what she was trying to show as some of the hazardous trees. At that time there were some trees down in the paths that had not been cut up yet, and others have fallen since. The Innis Arden Board is trying to manage the situation as best they can.

Ms. Taber urged the Commission to include language in the hazardous tree recommendations regarding recreational areas, trails, children, etc. She pointed out that children use the trails to get to the school and the pool and to play in the woods. She said she would hate to have something happen to a child as a result of a hazardous tree. She pointed out that when trees are removed, they try to replace them. However, this is being done on a small scale because she has personally been providing the plantings. She said that, according to the arborist, there is a lack of diversity in the reserves. But the diversity has actually improved since some of the hazardous trees were removed. In addition, there has been growth of shrubs and berry producing habitat.

Ms. Taber said she moved to Innis Arden in 1998 because of the covenants and because her house had some view. Now her view is basically gone. Because of a few trees cut on private property, she has recovered a view of one mountain peak. She said she would like to see the water again, and this could be done by pruning some trees that have previously been cut to the ground and sprouted back. The arborist said that trimming the tree back 30 percent would not harm it.

Ms. Taber pointed out that the average lot size in Innis Arden is ½ acre. Elsewhere, the City is allowing five or six trees on 4,000 square foot lots to be cut to accommodate cottage housing, and all the water is coming down into the reserve areas. She wished the City could do something to at least slow this water before it gets to Innis Arden.

7. REPORTS OF COMMITTEES AND COMMISSIONERS

There were no reports of committees or Commissioners.

8. STAFF REPORTS

There were no staff reports scheduled on the agenda.

9. UNFINISHED BUSINESS

Continued Critical Areas Ordinance Update Deliberations

Mr. Torpey briefly reviewed the layout of the new matrix. He explained that left hand column identifies staff's proposed language, which is unchanged from the January 2005 edition. The middle column identifies the Planning Commission's recommended changes, and the right hand column identifies the changes that have been voted on by the Commission to date (Items 1-12). He recommended the Commission start their deliberations with Item 13. He noted that three comment letters were included in the Commission's packet. An additional comment letter was provided to the Commission upon their arrival at the meeting.

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

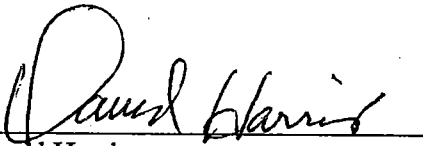
Commissioner Hall offered his home for the Planning Commission and Planning Department staff to hold a going away event for Mr. Stewart. However, he cautioned that during the event, the Commission should not discuss any future business of the Planning Commission. The Commission agreed to hold a going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

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

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

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

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

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

Staff Response to Agency Comments

The City of Shoreline received two comment letters from Washington State Agencies during the Planning Commission review of the proposed critical areas ordinance. Below you will find comments from the Department of Community, Trade and Economic Development as well as the Department of Ecology in **bold**, staff responses are directly below the agency comments.

- **Fish and wildlife habitat conservation areas do not appear to be addressed in Shoreline's marine shorelines.**

During review by the Planning Commission, this was addressed. SMC 20.80.270 as proposed designates all streams, wetlands, their buffers and the Puget Sound as Fish and Wildlife habitat conservation areas.

- **Mobile Homes are prohibited in flood hazard areas, under a new Senate Bill adopted in 2004, discrimination against housing choices is not allowed.**

The section of the code addressing mobile and manufactured homes is existing code language that is not proposed to be changed under the recommended version of the critical areas ordinance. It is recommended that the restriction on manufactured homes be removed and placed on the Planning Commissions agenda for further study of agency recommendations.

- **The section of the ordinance on aquifers appears to need updating.**

Per USGS and EPA maps, the City of Shoreline contains no aquifers.

- **It is reasonable to drop requirements to avoid impacts on very small wetlands. When cumulative impacts will be between 1,000 and 2,500 square feet, mitigation should be required.**

The Planning Commission recommendation now limits the exemption for alteration of a small, isolated wetland to 1,000 square feet. Any alteration above this amount would fall under standard critical area code provisions.

- **The Department of Ecology recommends that the City adopt Ecology's *Washington State Wetland Rating System for Western Washington*.**

The Planning Commission discussed this item and unanimously concurred during deliberation that more study regarding the potential impacts that changing to this system would have on existing and proposed development. This item is on the Planning Commission's agenda for future consideration.

- **The Department of Ecology also provided comments regarding wetland buffers, enhancement, and mitigation requirements.**

All of these items would be part of the list of considerations when the Planning Commission addresses the possibility of adopting DOE's wetland standards in the near future.

- **The Department of Ecology recommends adding a sixth step to the sequence of mitigation steps to be followed to reduce potential impacts to the environment.**

A sixth step to address this comment was added to SMC20.80.080.

- **The Department of Ecology recommends specific requirements for trails in wetlands or buffers.**

The Planning Commission and staff recommend leaving the code language as is. The code already requires trails to be constructed in a manner to reduce impervious surface. By not applying strict rules, there is room for design variation on a case by case basis while still protecting all functions and values of the wetland and its buffer.

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