AGENDA
CITY OF SHORELINE PLANNING COMMISSION
REGULAR MEETING

Thursday, February 17, 2005
7:00 P.M.

Shoreline Conference Center
Board Room
18560 – 1st Ave NE

		Estimated Time
1.	CALL TO ORDER	**7:00 p.m.**
2.	ROLL CALL	**7:02 p.m.**
3.	APPROVAL OF AGENDA	**7:04 p.m.**
4.	APPROVAL OF MINUTES a. January 20, 2005	**7:06 p.m.**
5.	GENERAL PUBLIC COMMENT	**7:10 p.m.**

The Planning Commission will take public testimony on any subject which is not of a quasi-judicial nature or specifically scheduled for this agenda. Each member of the public may comment for up to two minutes. However, Item 5 (General Public Comment) will be limited to a maximum period of twenty minutes. Each member of the public may also comment for up to two minutes on action items after each staff report has been presented. The Chair has discretion to limit or extend time limitations and number of people permitted to speak. In all cases, speakers are asked to come to the front of the room to have their comments recorded. Speakers must clearly state their name and address.

6.	STAFF REPORTS a. Workshop discussion on Critical Areas Ordinance Update	**7:15 p.m.**
7.	REPORTS OF COMMITTEES AND COMMISSIONERS	**9:25 p.m.**
8.	UNFINISHED BUSINESS a. Planning Commission Retreat	**9:28 p.m.**
9.	NEW BUSINESS	**9:30 p.m.**
10.	ANNOUNCEMENTS	**9:32 p.m.**
11.	AGENDA FOR March 3, 2005 Comprehensive Plan Site Specific Changes Public Hearing	**9:34 p.m.**
12.	ADJOURNMENT	**9:40 p.m.**

The Planning Commission meeting is wheelchair accessible. Any person requiring a disability accommodation should contact the City Clerk's Office at 546-8919 in advance for more information. For TTY telephone service call 546-0457. For up-to-date information on future agendas call 546-2190.

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These Minutes Subject to
February 17th Approval

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION
SUMMARY MINUTES OF REGULAR MEETING

January 20, 2005 Shoreline Conference Center
7:00 P.M. 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 that 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 defendable 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	Jessica Simulcik
Chair, Planning Commission	Clerk, Planning Commission

PLANNING COMMISSION AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Second Workshop to Discuss Critical Areas Ordinance Update
DEPARTMENT:	Planning and Development Services
PRESENTED BY:	Timothy M. Stewart, Director, Planning and Development Services Matthew Torpey, Planner II

EXECUTIVE SUMMARY

Attached is a comment matrix that includes staff responses to questions and comments forwarded to staff by the Planning Commission. Staff received six responses from the Planning Commission totaling approximately 80 unique questions. Staff analyzed the responses, eliminated repeated questions and ordered the responses sequentially according to which section of the draft critical areas ordinance is in question.

This second workshop is a continuation of the Planning Commission's investigation into the draft critical areas ordinance presented January 20, 2005. No action is proposed to take place at this time. The purpose of this meeting is to respond to questions and comments raised by the Commission. Staff is available for consultations regarding this draft but the first public hearing at which comment will be taken by the Planning Commission regarding the proposed amendments is scheduled for March 17, 2005.

The City's CAO was adopted in 2000 using Best Available Science (BAS). That science has been supplemented by the City of Shoreline Stream and Wetland Inventory (May 2004) and the Draft Lake Washington/Cedar/Sammamish Watershed (WRIA 8) Chinook Salmon Conservation Plan (November 12, 2004), the Adolfson Technical Memo dated December 7, 2004 and numerous other publications and documents. Many of those documents are summarized in a technical memorandum produced by Adolphson and Associates (October 2003).

The draft update contains a number of important changes, including:

- Significant increases in stream and wetland buffer requirements, ranging from 15% to 250%.
- Elimination of the disparity in levels of protection between wetlands and streams.
- Significant increases in Wetland replacement and enhancement ratios.
- Clarification of the terms "hazardous tree" and "salmonid fish use".
- Clarification that Fish and Wildlife Habitat areas are places formally designated by the City of Shoreline, based up 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”.

All inquiries, questions, and comments in regards to the draft documents may be directed to Matt Torpey, Planner II. City of Shoreline, 17544 Midvale Ave. N., Shoreline, WA 98133. (206)853-4162, or email mtorpey@ci.shoreline.wa.us

STAFF RECOMMENDATION

No action is required of the Planning Commission at this time. The purpose of this meeting is to continue the introduction of the proposed code changes to the Planning Commission and respond to questions and comments the Commission may have.

ATTACHMENTS

Attachment I: Comment and Response Matrix
Attachment II: Directors Interpretation of Tree Clearing in a Critical Area.

Critical Areas Review

Item #	*Draft Code Section*	*Questions/Comments (as of 1/__/05 through 1/31/05)*	*Staff Response*
1	**Definitions**		
2	**20.20.046 C 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;~~ ~~F~~C. Stream corridors; ~~G. Estuaries;~~ ~~H~~D. Aquifer recharge areas; E~~I~~. Wetlands ~~and wetland transition areas~~; and F~~J~~. Fish and wildlife ~~H~~habitat conservation areas~~s of endangered species~~. (Ord. 352 § 1, 2004).	Chapter 20.20 Definition of “Critical Areas” Steep Slopes was removed as one of the characteristics of a critical area, yet in a number of places in the CAO, there is still reference to “steep slopes”. Why were soils having high water tables removed? What was the purpose of having highly acidic soils as part of a critical area and why was it removed? You removed Estuaries from the definition. I assume because Shoreline doesn’t have any. We don’t have any Aquifer recharge areas either. Why wasn’t that removed? You removed a “wetland transition area” from the definition. What is that and why was it removed? Do fish and wildlife habitat conservation areas cover more than just endangered species? If so, section F is broader than what was there before, because only conservation areas of endangered species were covered.	All of the items referenced in the comment were removed in order to clearly identify the critical areas identified by the GMA, wetlands, geologic hazard areas, aquifer recharge areas, fish and wildlife habitat areas, flood hazard areas, and streams. The term endangered species was removed from the definition specifically because fish and wildlife habitat areas typically include listed, threatened, priority and endangered species. This is explained in SMC20.80.230(A).

Item #	*Draft Code Section*	*Questions/Comments (as of 1/__/05 through 1/31/05)*	*Staff Response*
3	**20.20.22 F definitions.** **Flood Hazard Areas** Those areas in the City of Shoreline subject to inundation by the base flood including, but not limited to, streams, lakes, wetlands and closed depressions.	A "Flood Plain" is an ecosystem while a "Hazard" area is a completely different issue.	Staff agrees with this comment
4	**20.20.024 H definitions.** **Hazardous Trees** Trees that have a structural defect, combination of defects or disease resulting in a structural defect that, under the normal range of environmental conditions at the site, will result in the loss of a major structural component of that tree in a manner that will: 1. 1. Damage a residential structure or accessory structure, place of employment or public assembly or approved parking for a residential structure or accessory structure or place of employment or public assembly; 2. Damage an approved road or utility facility; or 3. Prevent emergency access in the case of medical hardship. Removal of hazardous trees shall occur consistent with the tree conservation permitting and site restoration requirements of SMC 20.50.290 to 20.50.370.	The word "will" in the 6th line of the definition should be "may". The way the definition reads now, a tree is hazardous only if a structural defect will result in a loss of a major structural component of the tree. It should be that the defect may cause a loss of a major component and then only if the loss would in all likelihood damage the items in subparagraphs 1and 2, or may prevent access as in subparagraph 3. The final sentence is not actually part of the definition of a hazardous tree and should probably be moved to another section.	The term "will" is used in context of the recommendation of an arborist as required to determine if a tree is hazardous or not. Determination of a hazardous tree is typically done under emergency circumstances, using the term "may" allows for wide speculation on the future viability of a tree or it's structural component. The final sentence, while not part of the definition, guides the reader to the relevant code section.

Item #	Draft Code Section	Questions/Comments (as of 1/__/05 through 1/31/05)	Staff Response
5	**20.20.046 S definitions.** **Streams** Those areas in the City of Shoreline 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 open watercourses, unless they are used by salmonids or are used to convey streams naturally occurring prior to construction ~~in such watercourses~~. 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.	Remove the phrase "in the City of Shoreline." It puts this definition in conflict with the one later in the code and if a portion of a stream is outside but immediately adjacent to our City limits, we should afford it the same level of protection that we provide to the portion of the stream within our City. In Stream Definitions, it is not clear why the word "open" has been added. It would seem the CAO would encourage and promote the day lighting of streams whenever and where ever feasible. Please clarify in a plain language summary, the definition of "stream" to include artificial created watercourses that may convey fish. How do buffers apply to piped watercourses that may be defined as a stream? By adding the term "open" to the definition, it seems to say that a stream can never run through a pipe even for a short distance and still be called a stream while it is in the pipe. The obvious outcome of that analysis would be that buffers would disappear for the portion of the stream in the pipe, even though fish could still easily pass through. I can understand that if the "stream" is piped in over a long distance that it at some point loses its ability to be a stream, but I think the distinctions drawn in the document between open and covered and natural and artificial need to be looked at closer.	Agreed, "in the City of Shoreline" in unnecessary and could be deleted. Regarding "open," the current definition appears to only apply to open stream channels based on the wording "surface waters produce a defined channel or bed." Adding the word "open" further clarifies that it does not apply to underground/piped waters. The CAO does encourage daylighting (see SMC 20.80.480(I). Critical areas regulations are required to protect the "functions" of critical areas. For streams, buffer functions include shade, climate, woody debris, and sediment and pollution removal. These functions no longer are effective or they operate differently, when a stream is piped. For example, no longer is there justification to preserve shading when a stream is in a pipe. For short pipe sections, it is likely that buffers extending from the ends of the adjacent stream channel would also "buffer" the piped section. .
6	**Tree Conservation, Land Clearing and Site Grading Standards**		
7	**20.50 Tree Conservation, Land Clearing and Site Grading Standards**	What is a significant tree and where is it defined?	Significant trees are defined in SMC 20.20.048 under Tree, significant.

Item #	*Draft Code Section*	*Questions/Comments (as of 1/__/05 through 1/31/05)*	*Staff Response*
8	**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.	Are "pruning" and "cutting" a tree the same?	A director's interpretation of this section was issued in March of 2001. It is included as "Attachment II" at the end of the comments.
9	**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: … 6. Removal of trees from property zoned RB & I, CB & NCBD and NB &O, unless within a Critical Area or Critical Area Buffer.	Why do we want to exclude commercial zoning districts from the provisions of tree conservation? Can't we have businesses and trees in the same area?	Most stands of significant trees are in residential zones. Retention of trees on Commercial sites often results in site design that limits redevelopment.
10	**20.50.310 Exemptions from permit.** 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).	Practically, how does the City keep track of how many significant trees are removed from a property unless there is a complaint? Wouldn't it be better to replace a significant tree concept with a percentage of total trees allowed to be removed? i.e. can't remove more that 10% or 20% of trees without a permit.	The city currently does not keep a running total of trees cut on a parcel, especially if we are not notified of the cutting. Staff does not have an opinion whether a percentage system would work better or not.

Item #	*Draft Code Section*	*Questions/Comments (as of 1/__/05 through 1/31/05)*	*Staff Response*
11	**20.50.330(A)(5) 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. … 5. All required bonds or other assurance devices are posted with the City.	It looks like something was deleted from this paragraph (A)(5). Was it?	No changes are proposed to this section.
12	**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.	When can you remove a plant defined as a noxious weed by the State from a critical area? i.e. Can you remove English Ivy from a Landslide area even though you may improve the health of the area while degrading the ability of the area to withstand a landslide?	The removal of an invasive species is exempted by SMC 20.80.030(H), a proposed exemption to encourage conservation and enhancement activities, such as the planting of native vegetation.
13	**20.50.350 Development standards for clearing activities.** … 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).	How high up the tree do you measure the diameter of a Landmark Tree?	The diameter of any tree is measured at breast height as defined under “tree, significant” in SMC 20.20.048.

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14			
15	**Critical Areas – General Provisions**		
16	**20.80.010 Purpose.** … 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;	The last line refers to "steep slope" failure. You previously removed the definition of steep slope from the chapter so this reference needs to be changed.	The definition of "steep slope hazard areas" remains in the code (SMC 20.20.046(S)).
17	**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.	Need to focus closely on how the regulations actually affect a property owner, and in particular whether the CAO will place affirmative duties on a property owner to comply with the terms of the CAO. Does an owner who is planning to develop or modify his property have an affirmative duty to determine if his property includes a critical area, if his property is not included on any of Shoreline's critical area maps? Or is it the obligation of the City to determine whether the property includes a critical area. Section (A) suggests that the maps are for informational purposes only, but when will the city be able to force a property owner to provide geotechnical info on his property if the property is not within the general critical areas on the maps?	Staff is currently producing a City wide critical areas maps that will depict areas of known critical areas. This map will serve as a type of warning that critical areas may be present on a property. The City may then require further studies, at the applicant's expense to determine the extent of critical areas on the property. The authority is provided under SMC 20.30.110(D). For geotechnical critical areas, the City relies on variety of sources to determine if a parcel has slopes over 15%, the first of which is site topography. If it is clear that a site has slopes greater than 15%, they fall under the provisions of the critical areas ordinance.

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18	**20.80.030 Exemptions.** The following activities shall be exempt from the provisions of this chapter: … I. Removal of hazardous trees in accordance with SMC 20.50.310(A)(1). **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 ~~on private property~~ involving danger to life or property or substantial fire hazards. ~~Any~~ hazardous 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~~ shall contact the City regarding the emergency, if practicable, prior to removing the tree, and no later than one working day following the emergency. After the emergency, the person or agency taking the action shall conduct a professional evaluation and perform site restoration consistent with SMC 20.50.330 and 20.50.360.	The revisions for clearing create an overly large loophole. Hazard trees in critical areas can be removed without advance notice, even if there is no imminent threat. 48 hours advance notice should be required unless there is an imminent threat, meaning that there is a significant risk of loss of life or property in that 48 hour period. I could see this happening if a major windstorm were coming, but it couldn't be used as an emergency excuse during a calm summer day. The advance notice would provide an opportunity for the city to review the hazard determination while the tree is still standing, and perhaps avoid some ex post facto debates.	The existing code section states that, "if possible, trees should be evaluated prior to removal…" the section further states that the party removing the tree shall contact the City prior to removing the tree if possible.

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19	**20.80.030 Exemptions.** … 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;	Is the parenthetical beginning on line 2 the definition for "all steep slopes" or just "small steep slopes"? Why do we have a definition for small steep slopes when it is not referred to in the rest of the CAO? Maybe we want to call it something other than small steep slopes. There are references later on to moderate hazard and high hazard areas based on the slope of a hillside in the Landslide definitions. The "steep slope" concept is confusing when the CAO is viewed as a whole.	This section is not proposed to be altered during this critical areas update. We do not have a definition of "small steep slopes" in the critical areas ordinance because they are exempted from the ordinance.

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20	**20.80.030 Exemptions.** … J. View preservation and enhancement programs may be permitted in Critical Areas and their buffers if a Critical Area Stewardship Plan is approved as a Clearing Permit under SMC 20.50.290 and 20.50.300. The Critical Area Stewardship Plan must meet all of the following criteria: 1. The Plan will result in no net loss of the functions and values of each critical area. 2. The Plan will maintain or enhance the natural hydrologic systems on the site. 3. The Plan will maintain, enhance or restore native vegetation on the site. 4. The Plan will maintain habitat for fish and wildlife on the site and enhance the existing habitat. The Plan may be phased. A performance bond or other acceptable security device to ensure the implementation of the plan may be required in an amount to be determined by the Director. The Director may require submittal of periodic monitoring reports as necessary to ensure that the criteria of the plan are being met. The contents of the monitoring report shall be determined by the Director, and may be subject to third party review, paid for by the applicant, at the Director's discretion.	With respect to view preservation (covenants), could this provision be used by other areas/neighborhoods who might pre-emptively create some kind of neighborhood association with their own "view" covenants to allow them to top or remove trees more so than otherwise would be allowed under code? We need to remember that we all have "views" (i.e. the Sound is not the only kind of "view") that someone might want to protect. This appears to be the only "non-environmental" function and value we offer special protection to. Does this set any kind of unintended legal precedent to open up other non-environmental parameters for protection? I like this new section allowing for view preservation in critical areas. My understanding of tree cutting and view preservation is as follows. If you are not in a critical area, you can preserve your view by cutting down trees, (or topping trees?) as long as you cut down trees less than 8" in diameter. And if they are in excess of 8", then you can cut down up to 6 in a 36 month period of time. If you are in a critical area, before this section was added, you couldn't cut any trees down. Now you can file a critical area stewardship plan which once approved by the city, would allow the critical area to be modified for view preservation and enhancement according to the plan. A performance bond should always be required. Change "may" to "will".	The City of Shoreline is under no obligation to adhere to the covenants of any homeowners association. If a property owner met the provisions of this code section, certain trees could be removed. No precedent would be established unless an amendment was adopted. Staff concurs with this general interpretation of the code. In very few cases, the small amount of a bond is less than the cost to maintain the file on the bond. In this case, a bond may not be required.

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21	**20.80.030 Exemptions.** … ~~I~~L. Educational activities, scientific research, and outdoor recreational activities, including but not limited to interpretive field trips, bird watching, and use of existing trails for horseback riding, bicycling and hiking, that will not have an adverse effect on the critical area;	According to this paragraph, you can use existing trails through critical areas for horseback riding. It is hard to imagine that such a use would not have an adverse impact on a critical area. And I note that horseback riding on trails next to streams or fish and wildlife habitats is not one of the examples used to describe non intrusive uses later in the CAO. Are there any parts of Shoreline where you can actually keep horses? If not, then maybe this section should be revised. At least keep horses on trails used by horses, as opposed to any trail that now exists in Shoreline.	Staff agrees that "horseback riding" should be deleted. Should "swimming" at "beaches" be allowed?
22	**20.80.030 Exemptions.** … ~~K~~N. Minor activities not mentioned above and determined by the City to have minimal impacts to a critical area;	What is the definition of "minimal"?	We are open to suggestions for improving the wording of this exemption, but feel that it is important to have an exemption so that a permit process is not required for all minor activities that have no measurable impact.
23	**20.80.030 Exemptions.** … P. Up to six significant trees may be removed from a critical area or a critical area buffer if a Clearing Permit is approved under SMC 20.50.290 and 20.50.300 and includes sufficient mitigation so that there is no net loss of the functions and values of each type of critical area.	Ch 20.80.030 P says that even in a critical area, you can cut down up to 6 significant trees if you get permission and mitigate. The definition of significant tree (8") makes sense only sometimes. Net Loss. This is problematic in that there is a functional loss with each tree removed. The removal of six trees on most suburban lots could be considered significant. Even restored there is a net loss between the time of restoration and functional maturity.	Non-significant trees would fall under exemption SMC 20.80.030(M) routine maintenance of existing landscaping. To qualify for "no net loss" under this exemption, a qualified professional in the field of the critical area affected would determine the level of protection to ensure "no net loss" of functions and values.

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24	**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	Why is there a distinction between structures that are not single family detached residences, (paragraph A 1) and single family detached residences, (paragraph A 2)? One allows changes as long as the footprint isn't modified. The other allows up to a 750 sq. foot addition to the footprint. I thought we eliminated the square foot requirement when we addressed technical changes to this part of the code a year ago. If not, we should eliminate it now. The real issue is whether the modification impacts the critical area's values and functions. It has nothing to do with the size of the modification. As an example, take a U shaped building wholly within a critical area. Why shouldn't a property owner be able to change the U into a rectangular building? And what difference does it make whether it is single family or not? Both paragraphs (1 and 2) refer to "steep slope hazard areas". This is an undefined term.	This section establishes slightly different standards for single family residences as opposed to other structures. No change is proposed for this section. Steep slopes are defined in SMC 20.20.046

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25	**20.80.040 Partial exemptions.** … 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.).	This section seems to exempt large developments from the CAO. Does this mean if you need a grading permit and a building permit that the entire development is exempted from the CAO? Or does this mean that once a development is approved and you apply for an additional permit related to the development, that it doesn't allow the city to re-review its approvals if the new permit doesn't impact the critical area? This entire paragraph is unclear and needs to be redrafted to clarify what it is intended to cover.	This does not exempt large developments from the CAO. The exemption makes it so that review is not required multiple times for the same project. For example, if critical areas review is conducted for a plat and the conditions remain the same, then a second round of review is not require to build the individual houses of that plat. No changes are currently proposed, but staff could work on improving clarity if seen as a priority.

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26	**20.80.050 Notice to title.** A. To inform subsequent purchasers of real property of the existence of critical areas, ~~W~~when development is permitted in an identified critical area ~~which is comprised of a regulated critical area~~ or its associated buffer, a notice to title applicable to the property shall be filed with the King County Department of Records. The notice shall state that critical areas or buffers have been identified on the property and the fact that limitations on actions in or affecting the critical area or buffer may exist. The notice shall run with the land. This notice shall not be required for development by a public agency or public or private utility when: 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.).	While it is important for prospective purchasers to be made aware that land they are contemplating buying has a critical area on it, it is difficult to understand how the tract will be legally described when by their nature, critical area boundaries and their buffers are ever changing. In addition, forcing property owners to alert prospective purchasers of the possibility of critical areas will in some cases substantially reduce the value of the land in question.	The notice to title does not require a property owner to delineate the boundaries of a critical area that may be on their property. It is true that the presence of a critical area may subtract from the value of a property.

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27	**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 seek to avoid, minimize and mitigate the impacts to the critical areas through ~~Mitigation~~ actions ~~by an applicant or property ownershall~~that occur in the following sequence:	Where it states "projects that involve critical areas shall seek to avoid, minimize…", I suggest removing "seek to". It's too soft.	Agreed; propose to remove "seek to" from the statement.
28	**Geologic Hazard Areas**		
29	**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: ~~1. Class I/Low Hazard: Areas with slopes of less than 15 percent.~~ ~~2~~1. ~~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. ~~3~~2. ~~Class III~~/High Hazard: Areas with slopes between 15 percent and 40 percent that are underlain by soils consisting largely of silt and clay. ~~4~~3. ~~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	Concerned with how a slope is calculated. Tim told me that an average is taken to determine a slope. So if you had a slope, a portion of which was less than 15% and portions that were more than 15%, the average would be taken? Why is the phrase, "steep slope hazard" included? It seems to confuse things in several ways. First, steep slopes are no longer defined. Second, it suggests that there are areas sloping 40% or more that are not very high hazard areas, and it isn't clear why. Third, it doesn't seem to add anything. If an engineered solution developed by a qualified professional fixes slide/erosion/earthquake hazards on my site (including the proposed 50 ft buffer), will my site be removed from the critical area designation? If not, then why not?	The definition for steep slope hazard area reads, in part, "Those areas in the City of Shoreline on slopes 40 percent or steeper within a vertical elevation change of at least 10 feet. A slope is delineated by establishing its toe and top and is measured by averaging the inclination over at least 10 feet of vertical relief." The average would be taken from the top to the toe of the slope, not an average of the applicant's choice. Slopes less than 40% would be measured in a similar manner. If grading/engineering removes the hazard completely, then it may no longer exist and would no longer require protection. However, engineering solutions often mitigate without removing the hazard. In those cases, the hazard would continue to be regulated for future development.

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	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.~~ (Ord. 238 Ch. VIII § 3(B), 2000).		
30	**20.80.230 Required buffer areas.** … 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.	Why are buffers the same for moderate, high and very high landslide areas?	Staff agrees that variation on buffers may be warranted for different slopes.
31	**20.80.230 Required buffer areas.** … ~~C~~D. Landslide hazard area ~~B~~buffers may be reduced to a minimum of 15 feet when technical studies conclusively demonstrate that the reduction will adequately protect people and the proposed and surrounding development from the ~~critical~~ landslide hazard.	Can a technical study ever "conclusively" show anything? It seems to me that the study should not be showing that people will be protected but that the risk of a slide is not increased. If no additional risk of a slide is caused by a development, then the buffer should be allowed to be reduced down to the minimum of 15 feet.	Might consider changing language to "demonstrates that the reduction will not increase the risk of the hazard to people and property on or off site."
32	**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	The second sentence in this paragraph is not possible. I don't think mitigation measures can ever make a geologic hazard as safe as an area not containing a geologic hazard. And further, this paragraph says that if mitigation cannot "eliminate" the risk, then the proposal to alter the critical area should be denied. Paragraph A only applies to moderate and high landslide areas as paragraph B says	The elimination of a geologic hazard is the objective of mitigation measures. Although all risks may not be eliminated, this section requires that the applicant eliminate significant risk. Staff agrees with the last sentence of this comment.

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	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. 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.	no changes are allowed at all to a very high hazard area except through reasonable or special use permits. The new language added to paragraph C directly contradicts paragraph A in that it seems to allow for a modification to be approved if a geotechnical engineer states that measures simply to "reduce" a risk have been incorporated into the plan. Paragraph A requires "elimination" of the risk. The final unreferenced subsection to paragraph C was moved from paragraph F. Had it been left as its own paragraph, it would have allowed a property owner to get a geotechnical engineer to prepare a report for any alteration to a geologic hazard area. Now you can only do so for a moderate or high (not very high) landslide hazard area. Did you mean to limit an owner's right to alter a critical area to Landslide hazard areas only?	Alterations to very high hazard areas are not allowed, hence their exclusion from this section. Staff does not agree that moving the paragraph changes the requirements of an application or specific piece of property.

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33	**20.80.240(E) Erosion Hazard Areas.** … 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.	What is "downstream receiving water"?	"Downstream receiving water" is the water (stream, lake or sound) located down slope from the activity that would "receive" sediment or pollutants that are washed down from a site.
34	**20.80.240(E) Erosion Hazard Areas.** … 6. The use of hazardous substances, pesticides and fertilizers in erosion hazard areas may be prohibited by the City of Shoreline.	Under what circumstances "may" the City prohibit the use of pesticides and other hazardous substances? Is there an obligation of good faith? Does the City have to prove irreparable damage to something? What rights does a property owner have to object? And why is the right limited only to erosion hazard areas? Are you assuming that pesticides run off only in erosion areas? Why wouldn't there be run off from a very high landslide area or other critical areas?	The prohibition would likely be the result of site specific circumstances.
35	**20.80.250 Mitigation performance standards and requirements.** B. The following additional performance standards shall be reflected in proposals within geologic hazard areas: … 7. The use of retaining walls that allow maintenance of existing natural slope areas are preferred over graded slopes. … ~~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).	(B)(7) Why are retaining walls preferred over graded slopes? It seems like a retaining wall is just as much of a modification as regrading the slope. (B)(12) This section contradicts Ch 20.80.240 A which says that mitigation or modification to a critical area will only be allowed if the hazard is eliminated.	Retaining walls are preferred over graded slopes because graded slopes typically contain looser material that may be distributed over time, whereas material retained behind a wall may be better managed. Section (B)(12) states that development shall not increase instability or create a hazard. Section (A) states that a proposal shall be denied when mitigation cannot eliminate a significant risk. We see no contradiction in the two sections.

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36	**Fish and Wildlife Habitat Conservation Areas**		
37	**20.80.260 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. … 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).	Is the word "listed" in line 4 more restrictive than the deleted word "identified"? Note that subsection A requires that certain species be listed for there to be a habitat conservation area while subsection C provides that the City may give special consideration to areas where the species is or may be listed. Paragraph (C) should be in the findings, not the code. It does not appear to be legally enforceable or implementable.	The word "listed" is more precise. State and federal agencies formally "list" threatened and endangered species. This statement falls under the Description and Purpose section, it is meant to give clarity and reason to the chapter.

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38	**20.80.270 Classification.** 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).	The first paragraph seems awkward, and should be reworded. This section requires only that the species be proposed or listed. The added words, "documented by best available science" are redundant as the introductory paragraph on page 60 already provides that best available science be reviewed and modifies subsections A-E. Do we define priority raptors anywhere? Is this a reference to state listing? What is a "priority raptor nesting tree"? As an example of why the CAO is so hard to enforce, take a situation where a listed priority raptor decides to make a nest in a fir tree that is in the middle of a shopping mall parking lot. Obviously the bird is happy with the location of the nest or it wouldn't have built it there. So why do we have to place a buffer around the tree and call the shopping mall a critical area? Wouldn't it be better to just recognize that the tree is probably critical to the raptor and let it go at that? Would the CAO as written not allow the owner of the property to make changes to his shopping mall for so long as the raptor chose to have a nest in the tree?	Could move "any of the following criteria" to just before the list to improve how the first sentence reads. Staff disagrees that this should be removed. BAS establishes factual basis rather than antecdotal information. This is a reference to the state listing criteria. A priority raptor nesting tree is a tree that has been determined to contain the nest of a raptor that is listed by the Dept. of Fish and Wildlife, DOE, or other agency.

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39	**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.	Why is there no buffer table for FWHCAs? In the absence of a table, how will buffers for FWHCAs be quantified?	There is a wide range of protection recommendations for habitat areas, depending on the type of species and how much research has been completed. Some species have recommended buffers, some have seasonal buffers (such during breading season), and others have recommended management practices, but no specific buffers.
40	**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).	Do these paragraphs read that fish and wildlife conservation areas can only be altered through the reasonable or special use permit section and then only if a habitat management plan is submitted and approved? How does this fit in with Ch 20.80.040 A which allows certain alterations to Landslide areas? Does this mean if the Landslide area is next to a stream and has overlapping buffers, the more restrictive wildlife conservation area buffer would apply?	Staff agrees with this comment. The most restrictive of any critical area buffer applies in all situations.
41	**20.80.300 Mitigation performance standards and requirements.** (For fish and wildlife habitat conservation areas.)	Suggest adding a performance standard that all stormwater must be mitigated on site. At the very least, it should be encouraged.	The City is currently using King County's 2000 surface water manual which determines drainage requirements.

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42	**Wetlands**		
43	**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 prevelance 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, 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 artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of 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. ~~B~~C. 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.	(The second paragraph of A) Why shouldn't wetlands that are artificially but inadvertently created be preserved? Take the drainage ditch next to I-5. It was artificially created and after years of neglect now has all the ingredients of a wetland. Why shouldn't it be preserved? What would happen if you artificially move a stream because of a road and create a new stream? (This would still be a stream because it was created to mitigate the loss of an existing stream). But then what if over the years the artificial stream becomes a wetland? Is it still protected? Clearly this paragraph was added to address the drainage ditch next to I-5 that may have at one time been a branch of Thornton Creek. Why are we fighting so hard to not classify this as a wetland or a stream? Why would artificial wetlands be excluded? In Section C. it states that the goal is "no net loss". There has already been significant loss of wetlands and wetland function within the city. The Ordnance should seek to moves us in a more restorative direction.	This language was not added to address the drainage ditch next to I-5. The proposed definition language of subsection (A) is nearly verbatim from the state definition of wetlands and is consistent with Ecology's regulation of wetlands. In adding the state language, we did not seek to classify the lands along I-5 one way or the other. (See RCW 36.70A.030(20).) The intent of this section is to not punish a person who has created habitat on their property in the past, such as a trout pond, marsh area, etc.

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44	**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: 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.	Are there any size limitations for a Type I Wetland? If not, can a Type I wetland be a Type II, III or IV wetland too, depending on its size? I think there needs to be a size limit for Type I wetlands. I am not sure what the term "wetland classes" means in Ch 20.80.320 B 2. Does it mean that there can be a type II wetland if it has 3 or more of the criteria that define a type I wetland? If that is not what was intended, then I don't know what a "wetland class" is. And if that is what was intended, then the term wetland class should be changed to read, "wetland criteria in Ch 20.80.320 A". In fact, anywhere in these subsections where the term "wetland class" appears, the term "class" should be changed to "criteria in Ch 20.80.320 A". (E) The concept of accidentally creating a wetland has been removed from the CAO. Accidentally created wetlands are not addressed anywhere in the CAO. Do we want to address this issue?	While there is no size limitation, a Type I wetland is not also a Type II, III, or IV wetland (although it may be inclusive of the characteristics of those wetlands). If a wetland, of any size, meets any of the criteria of a Type I wetland, then it is a Type I wetland. If a wetland is not a Type I wetland, and it meets any of the criteria for a Type II wetland, then it is a Type II wetland. And so on. In accordance with the definition of wetlands, wetlands do not include those "artificial wetlands intentionally created." Therefore, "accidental" wetlands, or wetlands that slowly develop over time, are regulated as wetlands under this code.

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	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).		
45	**20.80.330 Required buffer areas.** (See draft for complete text of section including the table of buffers.)	Nowhere in this chapter does it address upland or adjacent land use impacts. There is a natural relationship between buffer width and impacts from upland activities. Presently it falls to the owner of properties at waters edge to mitigate all impacts upland of him whether he owns the property or not. The standard buffer for a 50x50 sq ft type IV wetland (2500 sq ft) is 10,850 sq ft. The buffer is 4.3 times the size of the wetland!!!!!!!!! And Type IV wetlands don't have a minimum size, either. How small does a wetland have to be before it is not worth protecting? 100 square feet? 10 square feet? 1 square foot?	While Ecology recommends buffers relative to adjacent land use intensity, in the Ecology guidance nearly all the land use categories that occur in Shoreline are listed as "high intensity." Low and moderate intensity land uses include rural and forest types of land uses. Upland activities located beyond the buffer are required to comply with storm drainage and water quality standards. The exemptions section, SMC 20.80.030(F), includes an exemption for some small, low quality wetlands. The Commission may wish to consider some type of adjustment to the formula to address the "big buffer for a small wetland" issue.

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46	**20.80.330 Required buffer areas.** … ~~D~~C. The ~~maximum~~ standard buffer width shall be established, provided that the buffer may be reduced to the minimum buffer listed above if ~~unless~~ the applicant can demonstrate that a smaller area is adequate to protect the wetland functions and ~~-~~one or both of the following: 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.	The use of the word "may" in paragraph (1) makes this permissive, which seems to underline the minor edits to the subpoints. Can't tell whether subpoints (a) through (d) have any legal effect. Recommend making it explicit if the proposed use must be considered low impact and must meet all of the following criteria (or, if not, make it clear that they are optional).	Staff agrees this may be confusing and warrants consideration of alternative language.
47	**20.80.330 Required buffer areas.** … ~~C~~E. ~~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.	I would leave in "Applicants may choose…" line and change it to read, "Applicants are encouraged…". It sends a clear message that the city expects applicants to take a proactive approach.	The City cannot impose restrictions that go beyond the maximum requirements of its own code. Therefore, this sentence is proposed to be removed. If an applicant wants to go above and beyond our code requirements, that would be encouraged.

Item #	*Draft Code Section*	*Questions/Comments (as of 1/__/05 through 1/31/05)*	*Staff Response*
48	**20.80.330 Required buffer areas.** 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).	I don't understand how the requirement to place a wetland in a separate tract works. Does anyone really place deed restrictions on their property or separate wetlands into separate tracts? If so, who forces the property owner to do it and how does the process work?	Yes, deed and tract restriction are commonly used in this region. Typically, title or plat notices are recorded at the time of permit approval. For example, during approval of a plat, a tract would be recorded on the plat drawings as part of the plat review process.
49	**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.	How is "Reasonable Use" defined? Without a size limitation on Type I Wetlands, it seems that Type II, III, and IV wetlands could all be alternatively classified as Type I wetlands and therefore only modifiable through the reasonable or special use permit provisions.	"Reasonable use" is defined in SMC 20.20.044(R), although the nature of the legal context of this term inhibits our ability to define it more narrowly.
50	**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.	How "exhausted" defined? Does "feasible" mean technically or economically or both?	These are subjective terms that are defined on a case by case basis. The Commission may wish to consider alternative language.

Item #	*Draft Code Section*	*Questions/Comments (as of 1/__/05 through 1/31/05)*	*Staff Response*
51	**20.80.350 Mitigation performance standards and requirements.** … 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.	The last sentence of paragraph (B) seems to indicate that a prospective developer could build in a critical area. At what point would a development be denied?	The highest level of review falls under a critical areas reasonable use permit. This permit is required when a proposal is nearly or entirely encumbered by a critical area. Under certain circumstances a proposal not meeting the standard of "reasonable use" may be denied.

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52	**20.80.350 Mitigation performance standards and requirements.** … 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. *[This requirement is repeated in SMC 20.80.500(C) for application to streams.]*	Why is off-site mitigation considered to be inherently less valuable than on-site mitigation, realizing that environmental problems (and solutions) are often basin or area wide? Must off-site mitigation be adjacent to the critical area being developed? The way I read section (5), even though you have a Type IV isolated wetland that is not hydrologically connected to a water source, if you destroy that Type IV wetland and provide an alternate wetland, the alternate wetland mitigation area must be near an adequate water supply with a hydrologic connection. That doesn't seem fair.	It is our understanding that on-site mitigation is generally preferred over off-site mitigation because it ensures that the type of area being mitigated is comparable to the area of impact and it reduces the likelihood of permanent displacement of wetland and buffer areas. Proximity appears to provide greater certainty that the mitigation will be immediately related to the impacts. For example, if mitigation is provided off-site, but the mitigation site does not have the appropriate hydrology, the mitigation may fail or may not provide the same level of function.

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53	**20.80.350 Mitigation performance standards and requirements.** … D. **Wetland Replacement Ratios.** 2. When creating or enhancing wetlands, the following acreage replacement ratios shall be used: *[See Table 20.80.350D in the draft text.]*	After Tim Stewart explained how this table works, I don't have any questions about it. However, no one will ever be able to figure out what the table means and how it works without Mr. Stewart explaining it to them. Maybe an example should be given in the statute so people will understand how the table works.	Staff agrees with this comment and will develop examples.
54	**20.80.350 Mitigation performance standards and requirements.** … 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. … 7. Plant selection must be approved by a qualified consultant. … 16. All construction specifications and methods shall be approved by a qualified consultant and the City.	(E)(7) and (16) Reference is made to a qualified consultant. Who hires the consultant? The City or the property owner?	For any type of development proposal, the applicant is required to hire and pay for his or her own consultants.

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55	**20.80.350 Mitigation performance standards and requirements.** … 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: … 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.	How long must the creator of a wetland mitigation area post a bond for? Who pays for the monitoring reports? If the City decides to retain a consultant to review the status of the mitigation project, who pays for it? Under what circumstances would the City do that? If a wetland fails after 4 years and must be replaced, does the property owner then have to guaranty the survival of the wetland for at least another 5 years or only 1 year?	A typical wetland monitoring project lasts five years. The applicant. The applicant incurs all costs of their proposed development. We would typically review the mitigation project if a monitoring report came back negative. The new mitigation project may be required to survive for an additional five years. Typically this is decided upon by the qualified professional involved with the project.

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56	**Flood Hazard Areas**		
57	**20.80.380 Flood fringe – Development standards and permitted alterations.** … 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;	Does (E)(1) mean that if you are in a floodplain that you can't have a basement?	Yes. However, mapped flood plains in Shoreline are very limited.
58	**Aquifer Recharge Areas**		
59	**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.	Does the City have any Aquifer Recharge Areas? Could the City ever have one if it doesn't already? If not, then this Subchapter 6 could probably be eliminated.	There are no known aquifer recharge areas in Shoreline. Conceivably one could be identified in the future.

Item #	Draft Code Section	Questions/Comments (as of 1/__/05 through 1/31/05)	Staff Response
60	**Stream Areas**		
61	**20.80.460 Description 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 open 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.	Why can't artificial or underground watercourses be streams?	Artificial water courses can be classified as a stream if it is used by salmonids or is used to convey a stream naturally occurring prior to construction. An underground watercourse does not meet the definition of surface water that produces a defined channel or bed.
62	**20.80.470 Classification.** *[Numbering is corrected in this section.]* 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 and are not used by salmonid fish~~ and have~~	There is no specific reference to Puget Sound, marine waters, or the like. The definition of stream appears to technically include Puget Sound as it is written, it is confusing and potentially misleading. Even a very knowledgeable reader could read this draft code and not be able to determine whether Puget Sound shorelines are protected. Someone might not realize that "Type 1 streams" include Puget Sound, and sending them to the SMP to look for Shorelines of the State seems awkward. Recommend explicitly adding Puget Sound shorelines either to the definition of stream or, under 20.80.470.A, stating that Type 1 streams include the shoreline of Puget Sound. Type II streams used to be classified if it just had the potential for salmonid fish use. Now for it to be classified that way it must have salmonid fish use. To tighten up the definition even more, is it now clear that one siting of a salmonid will not be enough to meet the standard of "used by salmonid fish"? They now have to be documented and passability has to be shown. This looks like it was clearly added to address the issue of the one fish that was sited in Thornton Creek.	Shoreline protects the Puget Sound shoreline using the Shoreline Master Program. It does not appear that the code intended to include the Puget Sound as a Type I "stream," because the Sound is clearly not a stream. All streams that are "shorelines of state" would be Type I, but not all shorelines of the state would be streams. The "potential for salmonid use" is clarified in the new section (E), which based on state language and GMA direction. State rule WAC 222-16-031 states that fish use should be presumed when either documented or water quality parameters are met. GMA mandates giving special consideration to anadromous fish (those that swim to Lake Washington or the Puget Sound and back). In the current language, it is unclear what areas have "potential for salmonid fish use."

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	~~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. For the purposes of this section, "salmonid fish use" and "used by salmonid fish" is presumed for: 1. Streams where naturally reoccuring 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 Deparment of Fish and Wildlife; and 3. Streams that are 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. 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 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).	(E)(1) Why waive the presumption of salmonid fish use based solely on water quality parameters? It seems to me we should be looking at restoring stream health so that salmonid fish use is again viable, especially if there is historical evidence of previous salmonid populations. (E)(1) Why is a government agency rather than a qualified professional determining "salmonid fish use"? (E)(3) Was this section put in just because DOT doesn't have any plans to remove the fish barrier under I-5 on Thornton Creek? (previous E) The removal of this section will be a big deal. I don't understand the rationale in the box provided by staff. Again, I don't think there should be a distinction as to how a stream got there, either naturally, artificially, intentionally or unintentionally. Once it is there, the CAO should protect the functions and values of the stream.	The term "used by salmonid fish" has been subject ot extensive litigation and judicial interpretation. We have seen "dueling scientists" reach entirely different conclusions. This definition is proposed by staff to provide legislative clarity. Staff agrees this definition will be a point of contention. (E)(3) proposes fish-level protection for streams, even if fish are not present or presumed, if restoration is planned. The common way agencies plan restoration projects, is to include them in their capital improvement programs. One of the key reasons for removing the previous (E) is that it was a repetitive and not entirely consistent with the definition of stream in SMC 20.20.046.

Item #	*Draft Code Section*	*Questions/Comments (as of 1/__/05 through 1/31/05)*	*Staff Response*
63	**20.80.480 Required buffer 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; …	Are streams that are created by daylighting a channel artificial? Or are they natural because that is what they were before they were piped in. Are they still artificial streams but considered streams because they were intentionally created to mitigate the removal of a previously artificial stream? Very confusing.	The City makes no distinction between artificial and natural watercourses. The distinction made is between open and piped watercourses.

Item #	*Draft Code Section*	*Questions/Comments (as of 1/__/05 through 1/31/05)*	*Staff Response*
64	**20.80.480 Required buffer areas.** … 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, 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 grass lined swales, when located outside of the minimum buffer area as set forth in the Table 20.80.480B.	Are there any height restrictions to having structures overhang buffer areas? As an example, why couldn't a deck overhang a buffer area if it on the 3rd floor of a single family house and is 20-30 feet above the buffer area? Replace "grass lined" with bio-swales.	Buffers apply at all height levels. The Commission may wish to add an exception for overhangs.

Item #	*Draft Code Section*	*Questions/Comments (as of 1/__/05 through 1/31/05)*	*Staff Response*
65	**20.80.480 Required buffer areas.** … 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. 4. 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. 5. Where the buffer of the restored stream would extend beyond a required setback on an adjacent property, the applicant shall seek written agreement from the affected neighboring property owner. (Ord. 299 § 1, 2002; Ord. 238 Ch. VIII § 8(C), 2000).	Recommend changing the requirement from "the applicant shall seek written agreement" to "the applicant shall obtain written agreement." Otherwise, it has no more effect than a notice requirement.	Staff agrees with this assesment.

Item #	*Draft Code Section*	*Questions/Comments (as of 1/__/05 through 1/31/05)*	*Staff Response*
66	**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.	In critical areas, impacts that cannot be avoided should not be allowed. In my experience, rarely are there no feasible design alternatives.	This section is not proposed to change as a result of this update. An incident where all impact cannot be avoided may be a situation where a property is entirely encumbered by a critical area and it's buffer. In this case a critical areas reasonable use permit is required.
67	**20.80.500 Mitigation performance standards and requirements.** … 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.	How much is "significant. How is this measured?	Significant is a subjective term that is determined and interpreted by qualified professionals in their field of expertise.

Item #	*Draft Code Section*	*Questions/Comments (as of 1/__/05 through 1/31/05)*	*Staff Response*
68	**20.80.500 Mitigation performance standards and requirements.** … 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.	I'm not clear on why development can be allowed if the site is "scientifically" unsuitable. In my experience with present technology and design expertise it is rare that impacts to a site cannot be mitigated. If they cannot be mitigated then I would question why we would let the proposed development proceed.	This clarifies that "feasibility" is science and not fiscal.
69		Dsignate all streams and their buffers as fish and wildlife habitat conservation areas.	Staff agrees with this comment. Streams, wetlands and their buffers do function as fish and wildlife habitat areas.

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TREE AND LANDSCAPING MAINTENANCE IN CRITICAL AREAS
Section 20.80.070(J)
May 22, 2001
Ref. #8070052201

Issue:
Under SMC 20.80.070(J), "Normal and routine maintenance and operation of existing landscaping and gardens provided they comply with all other regulations in this section" is exempt from the provisions of the Critical Areas Overlay District standards.

Question:
What sort of activities would comply with this exemption? Is pruning regulated under the Critical Areas Ordinance? Does it require a permit?

Answer:
The specifics of the site and or the proposal would need to be considered in determining whether an activity would be considered "normal and routine maintenance and operation of existing landscaping and gardens". Specific cases could be handled through the City's existing process for Interpretation of Development Code (please see Table 20.30.040 in the Shoreline Development Code for additional information). In determining whether a specific activity would be exempt from critical area standards and clearing permit requirements under this specific provision, the Director would review the stated purpose of the Critical Area Overlay District Standards SMC 20.80.010 and the stated purpose of the Tree Conservation, Land Clearing and Site Grading Standards (SMC 20.50.290).

Discussion:
Cutting or otherwise removing trees, unless done under the hazard tree provisions of SMC 20.50.310(A)1 and 20.80.070(A), would generally **not** be considered routine maintenance and would generally not be exempt from the critical area regulations. Removal of any tree in a critical area may require a clearing permit. Outside of critical areas (including buffers), the removal of more than 6 significant trees requires a permit.

Typically, all minor pruning of vegetation in critical areas would be allowed without a permit, assuming it meets all other critical area standards. Minor pruning is defined as:

- Removal of less than 10 percent of the foliage, or if foliage has not developed, less 10 percent of the foliage buds, including branches up to 1 ½ inches in diameter; **and**

- Removal that does not adversely impact the central leader or does not significantly alter the natural form of the tree being pruned.

Minor pruning that is consistent with the Critical Area Overlay District standards is generally allowed in all critical areas without a permit to provide for the maintenance of planted species and other activities necessary to ensure the health of these areas.

In addition, on fully developed lots or the regularly maintained portion of partially developed lots, all pruning would typically be considered routine maintenance (and thus permit exempt) as **long as the pruning does not jeopardize the long-term health and stability of the trees in**

question. Excessive pruning, by definition, jeopardizes the long-term health and stability of trees. Excessive Pruning is hereby defined as:

- Removal of more than 30% of the original crown, unless necessary to restore the vigor of the tree or to protect life and property, or
- Removal that adversely impacts the central leader, unless necessary to restore the vigor of the tree or to protect life and property

Excessive pruning is generally not allowed on developed or regularly maintained lots within **critical areas** unless a clearing permit is obtained and the applicant meets all the critical area standards.

Please note: consistent with the language of the exemption (ie. *normal and routine maintenance and operation of existing landscaping and gardens*), pruning on developed lots within critical areas would typically not be regulated as strictly as pruning on undeveloped lots. The intent is to conserve critical area values and functions while allowing some flexibility for ongoing activities necessary to maintain existing non-conforming developed landscapes. Again, these examples are provided only as guidance. Exemptions under SMC 20.80.070(J) would be determined on a case by case basis.