AGENDA

CITY OF SHORELINE PLANNING COMMISSION
REGULAR MEETING

Thursday, June 1, 2006
7:00 p.m.

Shoreline Conference Center
18560 1st Ave. NE | Rainier Room

		Estimated Time
1.	**CALL TO ORDER**	7:00 p.m.
2.	**ROLL CALL**	7:01 p.m.
3.	**APPROVAL OF AGENDA**	7:02 p.m.
4.	**DIRECTOR'S REPORT**	7:03 p.m.
5.	**APPROVAL OF MINUTES** a. May 18, 2006	7:08 p.m.
6.	**GENERAL PUBLIC COMMENT**	7:10 p.m.

The Planning Commission will take public comment 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 6 (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.

7. CONTINUED PUBLIC HEARING *Legislative Public Hearing* 7:15 p.m.

i. **Permanent Hazardous Trees Regulations & Critical Areas Stewardship Plan**

a. Staff Briefing
b. Continued Public Testimony or Comment*
c. Continued Commission Deliberation
d. Final Staff Recommendation
e. Closure of the Public Hearing
f. Vote by Commission to Recommend Approval or Denial or Modification

**Since the public hearing has been continued from May 18, oral comment will only be accepted from those who did not testify on the 18th*

8.	**REPORTS OF COMMITTEES AND COMMISSIONERS**	9:15 p.m.
9.	**UNFINISHED BUSINESS**	9:20 p.m.
10.	**NEW BUSINESS**	9:25 p.m.
11.	**ANNOUNCEMENTS**	9:35 p.m.
12.	**AGENDA FOR June 15, 2006** **Two Public Hearings & Retreat Update** Jay Finney Site Specific Rezone #201508; Becker Rezone #201522	9:39 p.m.
13.	**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
June 1st Approval

CITY OF SHORELINE

SHORELINE PLANNING COMMISSION
SUMMARY MINUTES OF REGULAR MEETING

May 18, 2006 — Shoreline Conference Center
7:00 P.M. — Mt. Rainier Room

COMMISSIONERS PRESENT

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

STAFF PRESENT

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

CALL TO ORDER

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

ROLL CALL

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

APPROVAL OF AGENDA

The agenda was approved as submitted.

DIRECTOR'S REPORT

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

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

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

APPROVAL OF MINUTES

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

GENERAL PUBLIC COMMENT

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

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

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

Staff Overview and Presentation of Preliminary Staff Recommendation

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

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

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

Questions by the Commission to Staff

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

Public Testimony or Comment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Presentation of Final Staff Recommendation

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

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

Final Questions by the Commission

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

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

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

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

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

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

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

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

Commission Deliberation

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

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

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

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

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

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

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

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

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

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

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

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

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

Continuation of the Public Hearing

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

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

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

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

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

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

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

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

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

REPORTS OF COMMITTEES AND COMMISSIONERS

There were no reports from committees or Commissioners.

UNFINISHED BUSINESS

There was no unfinished business on the agenda.

NEW BUSINESS

There was no new business scheduled on the agenda.

ANNOUNCEMENTS

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

AGENDA FOR NEXT MEETING

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

ADJOURNMENT

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

_____	_____
Rocky Piro	Jessica Simulcik Smith
Chair, Planning Commission	Clerk, Planning Commission

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Memorandum

DATE: **May 25, 2006**

TO: **Planning Commission**

FROM: **Joseph W. Tovar, FAICP**
Director, Planning and Development Services
Matt Torpey, Planner II

RE: **Proposed Permanent Regulations amending provisions for Hazardous Trees and creating new provisions for Critical Area Stewardship Plans that would enable the limited cutting of trees and other non-hazardous vegetation in critical areas**

I. Planning Commission meetings of May 18 and June 1

The Planning Commission held a public hearing on May 18, 2006 to solicit oral public comment regarding the staff proposed amendments to the Shoreline Municipal Code that would adopt permanent language regarding the hazardous tree code as well as establish a Critical Areas Stewardship Plan. At the May 18 public hearing, 21 citizens provided oral comment. At the end of the meeting, Chair Piro left the hearing open for members of the public who did not comment, or would like to comment on changes to the proposed ordinance. The proposed changes are included in the packet for the June 1 meeting as Attachment A.

At the June 1 meeting it is anticipated that the Commission will take additional public comment and begin deliberation on the staff proposed amendments.

II. Proposed Changes to the Draft Code

Staff received several suggestions that a list of City approved arborists be established and a process formed so that the applicant for an exemption to the hazardous tree regulations would not have to pay two arborists in order to remove a tree. Staff believes that this approach to hazardous tree review is worth considering. The proposed code language is included as Attachment A.

III. Planning Commission Comments and Questions.

1. During deliberations at the May 18 meeting, staff was asked to investigate the definition of “trails”.

The Shoreline Municipal Code (SMC) does contain a definition of trails. Trails are defined as, "any path, track, or right-of-way designed for use by pedestrians, bicycles, or other nonmotorized modes of transportation." This definition is very similar or in some cases identical to the definition of "trails" used by several other jurisdictions in the Puget Sound region. The term "trails" is also used in various sections of the SMC, Comprehensive Plan and Park Master Plan, these sections are outlined in Attachement B.

Rather than redefining "trails", staff has proposed language in the code provisions for trees to give the Director the discretion to determine whether a "trail" is a designated trail for purposes of constituting a "target." In making such determinations, the Director could consult the above-cited definition, as well as any adopted City Comprehensive Plan or Park Master Plan map.

2. How does the *Viking v. Holm* case affect this proposed ordinance?

Included in this packet as Attachment C is a memorandum from Ian Sievers, City Attorney and Joe Tovar, Director of Planning and Development Services which discuss the relevance and effect of prior litigation, including *Viking,* on the City's authority and discretion to craft these regulations.

IV. Public Comment

The Planning and Development Services Department has received a number of additional written comments; these are included as Attachment D. As previously mentioned, the hearing was left open for members of the public who did not comment, or would like to comment on items new to the proposed ordinance.

V. Next Steps

This meeting is a continuation of the public hearing and deliberations from the May 18 hearing. If no additional members of the public choose to speak at this meeting, the Planning Commission may choose to close the hearing and begin deliberations. If deliberations are not concluded by the end of the meeting, the Commission may choose to continue deliberations to another date.

ATTACHMENTS:

#A Proposed Hazardous Tree Regulations
#B Trails Information
#C Memorandum from City Attorney and PADS Director
#D Public Comment Letters

20.50.310.A Exemptions from permit

1. Emergency situations on private property involving danger to life or property or substantial fire hazards.

    a. Statement of Purpose – Retention of significant trees ~~and vegetation~~ is necessary in order to utilize natural systems to control surface water runoff, reduce erosion and associated water quality impacts, reduce the risk of floods and landslides, maintain fish and wildlife habitat and preserve the City's natural, wooded character. Nevertheless, when certain trees become unstable or damaged, they may constitute a hazard requiring cutting in whole or part. Therefore, it is the purpose of this section to provide a reasonable and effective mechanism to minimize the risk to human health and property while preventing needless loss of healthy, significant trees ~~and vegetation~~.

    b. For purposes of this section, "Director" means the Director of the Department of Planning and Development Services and his or her designee.
    c. For purposes of this section, "peer review" means an evaluation performed by a qualified professional retained by and reporting to the Director. The Director may require that the cost of "peer review" be paid by the individual or organization requesting either an exemption or critical areas stewardship plan approval under this section.
    d. In addition to other exemptions of Subchapter 5 of the Development Code, SMC 20.50.290-.370, a permit exemption request for the cutting of any tree or clearing vegetation that is an active and imminent hazard (i.e., an immediate threat to public health and safety) shall be granted if it is evaluated and authorized by the Director under the procedures and criteria set forth in this section.
    e. For trees ~~or vegetation~~ that pose an active and imminent hazard to life or property, such as tree limbs or trunks that are demonstrably cracked, leaning toward overhead utility lines, or are uprooted by flooding, heavy winds or storm events, the Director may verbally authorize immediate abatement by any means necessary.
    f. For hazardous circumstances that are not active and imminent, such as suspected tree rot or diseased trees or less obvious structural wind damage to limbs or trunks, a permit exemption request form must be submitted by the property owner together with a <u>tree evaluation</u> ~~risk assessment~~ form. Both the permit exemption request form and risk assessment form shall be provided by the Director.
    g. The permit exemption request form shall include a grant of permission for the Director and/or his qualified professionals to enter the subject property to evaluate the circumstances. Attached to the permit

exemption request form shall be a risk assessment form that documents the hazard and which must be signed by a certified arborist~~, registered landscape architect,~~ or professional forester.

h. ~~No permit exemption request shall be approved until the Director reviews the submitted forms and conducts a site visit. The Director may direct that a peer review of the request be performed at the applicant's cost, and may require that the subject tree(s) vegetation be cordoned off with yellow warning tape during the review of the request for exemption.~~ The Director shall provide a list of City approved arborists. Persons seeking an exemption under this provision shall choose an arborist from this list. The arborist shall make a professional recommendation as to the level of hazard of the subject tree in accordance with the standards of the International Society of Arboriculture. The final determination of a hazardous tree shall be decided by the Director.

i. Approval to cut or clear vegetation may only be given if the ~~Director~~ City approved arborist concludes that the condition constitutes an actual threat to life or property in homes, private yards, buildings, public or private streets and driveways, sidewalks, ~~recreational trails~~, improved utility corridors, ~~or~~ access for emergency vehicles~~.~~ and any trail as proposed by the property owner and approved by the director for purposes of this section.

j. The ~~Director~~ City approved arborist shall ~~authorize~~ recommend only such alteration to existing trees ~~and vegetation~~ as may be necessary to eliminate the hazard and shall condition the recommendation ~~authorization~~ on means and methods of removal necessary to minimize environmental impacts, including replacement of any significant trees. All work shall be done utilizing hand-held implements only, unless the property owner requests and the Director approves otherwise in writing. The Director may require that all or a portion of cut materials be left on-site.

(The remainder of this section is not proposed to change.)

City of Shoreline Trails Information

From SMC 8.12.010 Definitions.

G. “City of Shoreline open space, trail or park area” means any area under the ownership, management, or control of the city of Shoreline parks, recreation and cultural services department.

M. “Trail” means any path, track, or right-of-way designed for use by pedestrians, bicycles, or other nonmotorized modes of transportation. [Ord. 195 § 1, 1999]

From SMC 8.12.210 Trail use.

A. For the purposes of this section, “travel” shall be construed to include all forms of movement or transportation on a trail, including but not limited to foot, bicycle, horse, skateboard, roller skates and roller blades.

B. Trails are open to all nonmotorized users unless otherwise designated and posted. Trail restrictions may be posted at park entrances, trailheads or, in some cases, on individual trails.

C. Every person traveling on a trail shall obey the instructions of any official traffic control device or trail sign unless otherwise directed.

D. No motorized vehicles shall be allowed on city of Shoreline trails. For the purposes of this section, “motorized vehicles” means any form of transportation powered by an internal combustion or electric motor. This includes but is not limited to motor vehicles, golf carts, mopeds and all terrain vehicles. This section shall not apply to wheelchairs powered by electric motors, or authorized maintenance, police or emergency vehicles. [Ord. 195 § 1, 1999]

From the Comprehensive Plan

T36: Develop an off-street trail system that serves a recreational and transportation
function. Preserve rights-of-way for future non-motorized trail connections, and utilize utility easements for trails when feasible.

GOAL 5 from the Parks Master Plan

Seek to develop a diverse Citywide trail system linking key community elements such as parks, greenways, open spaces, regional trail systems, transportation nodes, neighborhoods, churches, and community businesses.

PR 21: Identify opportunities to develop pedestrian and bicycle connections in and around the City to expand connectivity of community amenities with a specific focus on linking neighborhoods with parks.

PR 22: Develop trail systems within parks and in the Interurban right-of-way focusing on linking these systems with existing, planned and future local and regional trails through coordination with Planning and Public Works and where possible enhancing historic watersheds.
PR 23: Support Transportation efforts to implement the “Green Street” program.

MEMORANDUM

TO: Shoreline Planning Commission

FROM: Ian Sievers, City Attorney
Joe Tovar, Director of Planning and Development Services

SUBJ: Private property rights and the City's critical areas regulations

DATE: May 25, 2006

In commenting on the proposed amendments to the City's regulations regarding hazardous trees and the creation of the Critical Areas Stewardship Plan, several individuals have raised the issue of private property rights. Some of them have cited prior appellate decisions concerning the enforcement of private covenants as well as last summer's Washington State Supreme Court decision in *Viking v. Holm*.

Innis Arden Club Board member Michael Jacobs, Innis Arden resident John Hollinrake, as well as the Club's attorney, Peter Eglick, have argued that these cases stand for the proposition that Shoreline's development regulations are legally obligated to allow for private property owners to exercise their covenanted rights to cut trees for views, even if those trees are located in designated critical areas. See the letters from Peter Eglick, (dated May 8, 2006) and John Hollinrake, (dated May 14, 2006) and hearing testimony by Michael Jacobs (minutes of the Planning Commission's May 18, 2006 public hearing). A number of other Innis Arden residents have given testimony in support of this position (e.g., see email of May 23, 2006 from Pamela Smit).

City staff is well familiar with the litigation cited by Mssrs. Jacobs, Hollinrake, and Eglick, as well as the Innis Arden view covenants, and prior litigation interpreting those covenants. We do dispute the degree of relevance and relative weight that the City is obligated to assign to the Innis Arden view covenants in light of the cited judicial pronouncements and the statutory mandate to the City to protect critical areas (RCW 36.70A.060).

The cited decisions by then-King County Superior Court judge Anne Ellington, court-appointed special masters, and the Court of Appeals involve adjudication of private rights between private parties. Neither the City of Shoreline, nor its regulatory predecessor King County, was named in any of that litigation as a party, nor was any local government directed by the courts to take any action as a result of those view covenant

decisions. As staff has earlier indicated, the City of Shoreline is not a party to the Innis Arden view covenants or cited litigation, did not approve the covenants, is not named in them, does not interpret or enforce them, and is not bound by them. Nor was the City's regulatory predecessor, King County. Nothing in the arguments made by Mssrs. Jacobs, Hollinrake, or Eglick, alters our conclusion.

The City is likewise well aware of the *Viking* decision, as well as the facts in that case. The facts in *Viking* can be easily distinguished from the facts before the Planning Commission here. The covenants under review in *Viking* limit the minimum residential lot sizes to half acre lots (i.e., they are *more* restrictive of private property rights than the city-adopted zoning) – in contrast, the Innis Arden view covenants direct the cutting of trees to protect private views, regardless of whether the trees are in environmentally sensitive areas (i.e., they are *less* restrictive of private property rights than the city-adopted zoning).

Thus, the question before the Court in *Viking* was whether a private covenant can be more restrictive than the local zoning, a question that the Court answered in the affirmative. The Court did not have before it the question of whether a private covenant that is less restrictive than the local zoning (e.g., cutting trees in a critical area for views) somehow binds the local government to alter its GMA mandated protection of critical areas to also be less restrictive.

It is also significant that the Growth Management Act provisions at issue in *Viking* (urban densities) are less directive than the provisions at issue here (the mandate to protect critical areas). Citing law Professor Richard Settle, the court noted "most GMA requirements are conceptual, not definitive and often ambiguous." The goals to *encourage* development within urban areas (RCW 36.70A.020(1)) and to *reduce* conversion of undeveloped land into low-density development (RCW 36.70A.0020(2)) are far less directive than the GMA requirement to ***protect*** critical areas. RCW 36.70A.060 states:

> "(2) Each county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW 36.70A.170…"
> In designating critical areas all jurisdiction shall consider minimum guidelines adopted by the State. RCW 36.70.050.

Underlined emphasis added.

The *Viking* court found that covenants restricting density were not in conflict with pubic policy as set by the Shoreline City Council's balancing of urban density goals with other goals such as protecting private property rights and open space. Since 2000, Shoreline has struck a balance between protecting property rights and protecting the environment. This balance reflects the critical area mandates mentioned above. The stewardship plan proposal now pending is an effort to fine tune this balance by enabling a greater degree of protection of property rights (e.g., view covenants) even in these areas, provided that the applicant can demonstrate that no net loss of critical area functions and values will result.

The Club's own litigation that tested the view covenants against King County's sensitive area ordinances is consistent with our approach that covenants may be more restrictive than critical area protections, but may not frustrate their enforcement. The following portions of the 1992 special master's report in *Innis Arden Club v. Binns* illustrate this relationship:

> "King County stated that some of the trees that the Respondents are concerned with may be in stream buffer areas…Tetlows' lot adjoins a ravine with a stream at its base. The slopes of the ravine are 40% or greater… Based on Exhibits 14,15, and 16, the letter from King county to Tetlow/Moren/McGee dated 6/2/92, as well as the view of the premises, the County's consent to trim trees on Tetlows' lot would be needed."
>
> "The letter of March 13, 1992 from Bottheim of King County to Ness states that a permit to alter vegetation within 50 feet of such a slope would be required and that the only permitted alterations would be removal of diseased or hazard trees, trimming and limbing for view enhancement, trail construction or stream/wetland enhancement. …Consent to trim any trees on the east side of Ness' property should be obtained from King County, should there be a decision to trim the Ness' trees."

To sum up, the staff believes that the Innis Arden Club's representatives have over-stated the effect of prior litigation, including *Viking*, on the City of Shoreline's discretion to adopt development regulations that protect critical areas. The Supreme Court has consistently held that such a decision is within the discretion of the legislative body. "Balancing the GMA's goals in accordance with local circumstances is precisely the type of decision that the legislature has entrusted to the discretion of local decision-making bodies." *Viking* at p. 128. The staff does not believe the current limits on view covenants under the existing critical areas ordinance will deny owners in Innis Arden of reasonable use of their properties, nor do we understand this to be their argument. Moreover, any owner with this claim would have relief available under the critical areas reasonable use permit.

At the same time, however, the staff reiterates its earlier position that the Planning Commission and City Council may take note of the fact of the view covenants, such as those in Innis Arden, and consider them as <u>one factor</u> when crafting development regulations. Thus, the staff believes that the range of the City's discretion includes the ability to consider regulatory tools whereby a property owner could propose limited cutting of trees in critical areas for view purposes, provided that the supplicant can demonstrate that such limited cutting would not result in a net loss of the values and functions of critical areas. Thus, the proposed language for critical areas stewardship plans would create the opportunity for the City to provide some reasonable accommodation of view covenants, adding value back into the covenants, while still meeting its statutory mandate to protect critical areas.

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Due to the large number of pages, all comment letters the City received in regards to hazardous trees regulations and critical areas stewardship plans are being provided to the Planning Commission under separate cover. Comment letters can be viewed online at the City's website: http://www.cityofshoreline.com/cityhall/departments/planning/ordinances/trees.cfm, or in-person in the Planning & Development Services Department: 1110 N. 175th St., Shoreline, Suite 107. Copies are available for a fee. If you have any questions, please contact Jessica Simulcik Smith at 206.546.1508 or jsmith@ci.shoreline.wa.us.